

**(2007) 03 BOM CK 0046**

**In the Bombay High Court**

**Case No :** Writ Petition No's. 854 and 925 of 2003

Janprabha Offset Works

APPELLANT

Vs

Savra Shramik Sangh and Dainik Janshakti <BR> Dainik  
Janshakti Vs Sarva Shramik Sangh and Janprabha Offset  
Works

RESPONDENT

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**Date of Decision :** 06-03-2007

**Acts Referred:**

Constitution of India, 1950 — Article 227  
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices  
Act, 1971 — Section 28, 32, 7

**Citation :** (2007) 3 BomCR 91 : (2007) 109 BOMLR 727 : (2007) 4 MhLj 97

**Hon'ble Judges :** B.R. Gavai, J

**Bench :** Single Bench

**Advocate :** U.S. Sawji, for the Appellant; P.N. Kutti, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

B.R. Gavai, J.—Both these petitions assail the judgment and order passed by the learned Industrial Court, Jalgaon in Complaint ULP No. 482/1999, thereby allowing the complaint of the respondent union. W.P. No. 854/2003 is filed by the Janprabha Offset works, which is the respondent No. 1 in the original complaint, whereas, W.P. No. 925/2003 is filed by Dainik Janashakti Trust, Jalgaon, which was respondent No. 2 in the original complaint.

2. The facts in brief, giving rise to the present petition are as under:

That, the respondent union/complainants filed a complaint alleging therein that the complainants were members of a registered union. It was alleged that the respondent No. 2 in the original complaint were publishing Daily Janashakti and it was printed by Janashakti Offset works i.e. original respondent No. 1. It was alleged that the respondent No. 2 (namely Shri N.B. Patil), Manager of the Dainik Janashakti Trust, was looking after all the affairs of the newspaper. It was alleged that the said respondent was getting his work done from the workers, who were

members of the Union and paying them salary. It is further alleged that the respondent No. 1 was one of the Departments of Dainik Janashakti. It was alleged that in pursuance to the directions of the Central Government, the complainant union had demanded to make applicable the recommendations of the Bacchavat Commission to its members. However, instead of complying with the same, the respondents had terminated 5 active members of the union, for which the complainant had taken recourse to appropriate proceedings. It was alleged that the denial on the part of the respondents to make applicable the recommendations of the Bacchavat Commission to the complainants, was an unfair labour practice and therefore, a direction was sought that the respondents be desisted from continuing with the said unfair labour practice and that they should be directed to make applicable the recommendations of the Bacchavat Commission.

3. The complaint was resisted by both the respondents. In so far as the petitioner Janprabha Offset was concerned, it had specifically contended that the Janprabha Offset and Dainik Janashakti are two different entities. Whereas, the former was a partnership firm registered under the Shop Act, the latter was a Trust registered under the Bombay Public Trusts Act. The contents of the complaint were denied and it was also denied that the provisions of the Bacchavat Commission were applicable to the said Janprabha Offset works.

4. The petitioner Dainik Janashakti had also filed its written statement denying therein, the employer-employee relationship with the workers, It was alleged that the petitioner Janashakti Trust was not at all concerned with the complainant. As such, the complaint suffers from misjoinder of party. It was therefore prayed for deletion of the Janashakti Trust from the array of respondents.

5. One of the employees on behalf of the complainant union examined himself in support of the complaint. Certain documentary evidence was also produced on record. None was examined on behalf of the respondents (petitioners herein). The learned Industrial court, after considering the evidence of the witness examined on behalf of the complainant, the documentary evidence and drawing an adverse inference for non-examination of any witness by the respondents, allowed the complaint, holding that the respondents in the complaint had committed unfair labour practice under Item 9 of Scheduled IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act (hereinafter referred to as the said Act) and further directed the respondents to provide the benefits of Bacchavat Commission to the employees (respondents to the petitions). Aggrieved by the said order, the present petitions have been filed.

6. Shri Prabhakaran, learned Counsel for the petitioners in W.P. No. 854/2003 submits that the complaint itself was not tenable. He submits that the complaint, which was filed on behalf of the union, was not tenable in the absence of any evidence on record to establish that the respondents/employees were members

of the said union. He submits that the petitioners had made a specific demand for production of the constitution of the union. However, the complainant union had denied the said request. The learned Industrial Court had, therefore, observed that an adverse inference could be drawn against the said union. He further submits that there was an admission on behalf of the witness of the complainant that the said witness was working in the respondent No. 1 (in the complaint) and that it has changed its name from time to time. At one point of time, it was Kavita Printing press. He, therefore, submits that the employer-employee relationship between the respondents and the petitioner i.e. Dainik Janashakti was not established. He submits that in view of the dispute regarding employer-employee relationship between the parties, the complaint under the said Act itself was not tenable. He relies on the judgment of the Apex Court in the case of Vividh Kamgar Sabha Vs. Kalyani Steels Ltd. and Another, and in the case of Sarva Shramik Sangh v. Indian Smelting and Refining Company Ltd. and Ors. reported in AIR 2003 SCW 5989.

7. He submits that the Bacchavat Commission deals with categorisation of newspaper establishments and further deals with classification of workers. He submits that in the absence of averments as to categorisation of newspaper and classification of employees, the award was not executable. The petitioners have further relied on the agreements between Kavita Printing Press dated 1-2-1984 and the settlement of the year 1979-80 between one Kavita Printing Press and the respondent employees, to establish that they were employees of the said Kavita Printing Press and not the employees of Dainik Janashakti.

Shri U.S. Sawaji, learned Counsel for petitioner in W.P. No. 925/2003 adopts the submissions made by Shri Prabhakaran, Advocate.

8. As against this, Mr. Kutti, learned Counsel for the respondent/employees submits that in view of the voluminous documents produced on record, it was established that both the respondents in the complaint were one and the same. Relying on Sub-section (d) of Section 2, read with para.1(a) and 2(b) of the Schedule to the Working Journalists and other newspaper employees (Conditions of service) and Miscellaneous provisions Act, 1955 ( hereinafter referred to as Journalists Act), he submits that there was functional integrity between the respondents. The establishments were required to be considered as a newspaper establishment. He submits that since the working of the printing press and newspaper were interdependent on each other, and since the financial control of both the establishments was under one person, the financial integrity was established and as such, they are required to be considered as one and the same. In support of this proposition, he relies on the judgment of the Apex Court in the matter of Regional Provident Fund Commissioner, Jaipur Vs. Naraini Udyog and Others, ; Noor Niwas Nurservy Public School v. Regional Provident Fund Commissioner and Ors. reported in AIR 2001 SC 277; Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers" Union and Its Workmen, .

9. He further submits that the judgment relied on by the petitioners regarding

jurisdiction to entertain the complaint under the said Act, are not applicable inasmuch, as admittedly, in all those case, the employees were the employees of the contractors and in that view of the matter, the Supreme Court has held that if there is a dispute regarding employer-employee relationship, the complaint would not be tenable under the said Act.

10. Relying on the judgment in the matter of Maharashtra Engineering Plastic and General Kamgar Union v. Little Kids and Ors. reported in 2005 1 CLR 658 and in the matter of Hindustan Coca Cola Bottling S/W Pvt. Ltd. and Anr. v. Narayan Rawal and Ors. reported in 2001 3 CLR 1025, he submits that if at the time of entertaining the complaint, the relationship of employer-employee is disputed, and if there is a strong material in the form of documentary evidence to show existence of relationship of employer and workman, it would be open for the Court under the said Act, to entertain the complaint.

11. He relies on the judgment of the Apex Court in the matter of Sadhana Lodh Vs. National Insurance Company Ltd. and Another, , to canvass that the supervisory jurisdiction of this Court under Article 227 of the Constitution of India is confined only to see, whether the inferior Court or tribunal has proceeded within its parameters and cannot correct an error apparent on the face of the record, much less, an error of law. He submits that while entertaining a petition under Article 227, this Court does not act as an appellate court or tribunal and it is not permissible for this Court to review or reappraise the evidence.

12. However, I find that the petitions deserve to be allowed on the short ground of jurisdiction. The Apex Court in the catena of decisions, starting from General Labour Union (Red Flag), Bombay Vs. Ahmedabad Mfg. and Calico Printing Co. Ltd. and Others, upto the case of Sarva Shramik Sangh reported in AIR 2003 SCW 5989 (supra), has held that, if the employer-employee relationship is disputed, the complaint under the said Act, in its limited jurisdiction would not be maintainable. In the present case, it can be seen that though in the complaint, the complainants have stated that the Janprabha Offset press is one of the Departments of the Dainik Janashakti and that both the respondents in the complaint were under the control of one person, the Dainik Janashakti in its written statement has categorically denied that the complainants are its employees. In the written statement of Dainik Janashakti Trust, in para. 3 it has been categorically stated as thus:

That the complainant union has committed miss-joined" of parties and hence on this ground only the complaint is liable to be rejected. The respondent No. 1 and respondent No. 2 are totally different entities and have no administrative concern with each others, respondent No. 1 is partnership firm registered under the Bombay Shop and Establishment Act, whereas, respondent No. 2 is a trust registered under the Trust Act and hence, the complaint is hit by serious lacuna of mis-joinder of parties.

In para.4, the Dainik Janashakti Trust has stated thus:

The complainant union has not sent any charter of demand to the respondent No. 2 nor the workers named in the complaint were at any time employed by the respondent No. 2. Respondent No. 2 has no employer-employee relationship with the workers for which the complaint has been made by the complainant union.

The Apex Court in the matter of *Sarva Shramik Sangh v. Indian Smelting and Refining Co., Ltd.* reported in AIR 2003 SCW 5989, has considered the various pronouncements of the Apex Court. We may gainfully reproduce some of the observations of the Apex Court made in para. 12, 13, and 14, which read thus:

12. In view of the rival submissions it would be appropriate to take note of the conclusions arrived at by this Court earlier. First at point of time is the *General Labour Unions case* (supra). This Court, inter alia, observed as follows:

The workmen have first to establish that they are the workmen of the respondent company before they can file any complaint under the Act. Admittedly, this has not been done. It is open for the workmen to raise an appropriate industrial dispute in that behalf if they are entitled to do so before they resort to the provisions of the present Act.

13. In *V. Kamgar's case* (supra) it was, inter alia, observed as follows:

At this stage it must be mentioned that this Court has also in the case of *General Labour Union (Red Flag) Bombay v. Ahmedabad Mfg. and Calico Printing Co. Ltd.* held that where the workmen have not been accepted by the company to be its employees, then no complaint would lie under the MRTU and PULP Act. We are in full agreement with the abovementioned view.

The provisions of the MRTU and PULP Act can only be enforced by persons who admittedly are workmen. If there is dispute as to whether the employees are employees of the company, then that dispute must first be got resolved by raising a dispute before the appropriate forum. It is only after the status as a workmen is established in an appropriate forum that a complaint could be made under the provisions of the MRTU and PULP Act.

14. Then comes the last of the cases i.e. *CIPLA's case* (supra) where detailed analysis have been made of the legal position. In paras 8, 9 and 10, it was observed as under:

8. 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 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 the master and servant between the appellant and the workmen in question. By this process, workmen repudiated their relationship with the contractor under whom they are employed but claimed 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.

9. Shri K.K. Singhvi, the learned Senior Advocate appearing for the respondent, submitted that u/s 32 of the Act the Labour Court has the power to "decide all matters arising out of any application or complaint referred to it for decision under any of the provisions of the Act." Section 32 would not enlarge the jurisdiction of the Court beyond what is conferred upon it by other provisions of the Act. If under other provisions of the Act the Industrial or the Labour Court has no jurisdiction to deal with a particular aspect of the matter, Section 32 does not give such power to it. In the cases at hand before us, whether the workman can be stated to be the workman of the appellant establishment or not, it must be held that the contract between the appellant and the second respondent is a camouflage or bogus and upon such a decision it can be held that the workman in question is an employee of the appellant establishment. That exercise, we are afraid, would not fall within the scope of either Section 28 or Section 7 of the Act. In cases of this nature where the provisions of the Act are summary in nature and give drastic remedies to the parties concerned elaborate consideration of the question as to relationship of employer-employee can not be gone into. If at any time the employee concerned was indisputably an employee of the establishment and subsequently it is so disputed, such a question is an incidental question arising u/s 32 of the Act. Even the case pleaded by the respondent Union itself is that the appellant establishment had never recognized the workmen mentioned in Exhibit A as its employees and throughout treated these persons as the employees of the second respondent. If that dispute existed throughout, we think, the Labour Court or the Industrial Court under the Act is not the appropriate Court to decide such question, as held by this Court in *General Labour Union (Red Flag), Bombay Vs. Ahmedabad Mfg. and Calico Printing Co. Ltd. and Others*, , which view was reiterated by us in *Vividh Kamgar Sabha Vs. Kalyani Steels Ltd. and Another*, .

10. However, Shri Singhvi very strenuously contended, by adverting to the scope of the Payment of Wages Act, 1936 and the scope of Section 33(c)(2) of the Industrial Disputes Act, that these questions can be gone into by the Courts and,

in this context, he relied upon the decision of the High Court of Bombay in *Vishwanath Tukaram v. G.M. Central Rly, V.T.* In determining whether the wages had been appropriately paid or not, the authority under the Payment of Wages Act was held to have jurisdiction to decide the incidental question of whether the applicant was in the employment of the railway administration during the relevant period. It means that at one time or the other the employee concerned was indisputably in employment and later on he was found to be not so employed and in those circumstances, the Court stated that it was an incidental question to be considered.

While negotiating the contention that u/s 32 of the said Act, an incidental question regarding employer-employee relationship could also be gone into, the Apex Court observed that the expression "all matters arising out of" clearly emphasizes that it has connections, and not that it is the basic issue. The Apex Court in para. 19 of the said judgment observed thus:

19. For getting protection under the Maharashtra Act, it has first to be established that the complainant is an employee of a person under whom he claims to be an employee, and against whom he files a complaint. In other words, the determinative question is can anybody who is not an employee of or under a person against whom a grievance is sought to be made file a complaint under the Act and the answer is inevitably No. The fundamental issue therefore is whether the complainant is an employee of the person against whom a complaint is made under the Maharashtra Act and if there is a dispute, he has to establish it, first before the appropriate forum designated for adjudication of such industrial disputes. Section 32 does not aid the appellant in the sense that it is not a matter arising out of the application, when the pre-existing relationship of employer-employee is a must and an essential pre-requisite. It is the core issue on which only the very locus to make a complaint can at all be claimed. A person who does not answer the description has no legal locus to file a complaint. A jurisdictional fact is one on the existence or otherwise of which depends assumption or refusal to assume jurisdiction by a Court, tribunal or the authority. Said fact has to be established and its existence proved before a Court under the Maharashtra Act can assume jurisdiction of a particular case.

Concurring with the view taken in *CIPLA's* case (*supra*) the Apex Court observed in para. 20 as under:

We have carefully gone through the construction placed upon the statutory provisions noticed and conclusions drawn as to the class or category of matters which only would fall within the purview of the Maharashtra Act and the necessity for any complainant to answer the description, as a condition precedent, to be or having been treated by the employer as his employee and the relationship of employee and employer with the employer against whom any such complaint of unfair labour practice is made and relief therefore is sought is beyond controversy and common case or accepted position and that we are in respectful agreement with the same. The interpretation of the relevant provisions of the

Maharashtra Act appears to be in tune with the legal sense of the words construed in the context of the statute and the jurisdiction of the authorities constituted thereunder. Such a construction paves way for avoiding uncertainty as well as possible inconsistency or expression of contradictory views when more than one group chose to avail different forums for similar kind of relief and therefore could not be said to have resulted in serious injustice, hardship or anomaly to warrant the countenance of a different view. A careful, critical and analytical scrutiny of the various provisions which consciously and conspicuously use the words employee and employer in all the relevant provisions would postulate the pre-existing relationship of such employee and employer being an accepted/acceptable fact. Consequently, the question of ousting the jurisdiction of an assumed and unfound jurisdiction to be otherwise existing, does not at all arise.

13. It is thus clear that though the Apex Court in all those matters, where the employees, who claimed to be employees of the principal employer, though they were employed by a contractor, has unequivocally ruled that, to bestow jurisdiction upon a court under the said Act, it is necessary that there has to be a pre-existing relationship between the employer and employee. When the relationship is disputed, the complaint under the said Act, would not be tenable.

14. In so far as the judgment of the Division Bench in the case of Hindustan Coca Cola Bottling s/w Pvt. Ltd. v. Narayan Rawal and Ors. reported in 2001 3 CLR 1025 this Court held that if the employer-employee relationship is established before the Industrial Tribunal or Labour Court under the Industrial Disputes Act or the employer-employee relationship is indisputable, then, complaint under the MRTU and PULP Act would be maintainable. The Division Bench further observed that if any time, the employee was recognized by the employer and subsequently repudiate such a question would be an incidental question arising u/s 32 of the Act and the Labour Court or the Industrial Court, as the case may, is bound to decide the said question. In the present case it can be seen that it is not the case that the respondent Dainik Janashakti at any point of time recognized the respondents/employees as its employees.

15. In so far as the observations of the learned Single Judge in the matter of Maharashtra Engineering Plastic and General Kamgar Union v. Little Kids and Ors. (supra) that, "From the above it will therefore, be clear that there must be at the time of entertaining the complaint, where relationship is disputed, strong material in the form of at least documentary evidence to show existence of relationship of employer and workmen", I find that in view of the pronouncement of the Apex Court that if employer-employee relationship is disputed, then the complaint under the said Act, would not be tenable, the said observations would not be of much assistance, to the case of the respondents.

16. In that view of the matter, I find that the complaint itself was without jurisdiction. The learned Industrial Court had no jurisdiction to entertain the complaint. In so far as the reliance placed by the learned Counsel for the

respondent on Sadhana Lodh's case (supra), I do not find that the said judgment would also be of much assistance to the case of the respondent. The issue of jurisdiction goes to the root of the matter. In view of the clear pronouncement of the Apex Court that if there is a dispute regarding relationship as employer and employee, the complaint under the said Act would not be tenable, I further find that in view of the specific denial raised by the Dainik Janashakti Trust that the complainants were not its employees, it was not permissible for the Industrial Court, under the said Act, to inquire into the question as to whether the complainants were employees of the said Trust or not. That question could have been gone into only in an appropriate proceeding under the Industrial Disputes Act. In that view of the matter, writ petitions are allowed. Rule is made absolute in terms of prayer Clause (B). It is made clear that the present petitions are allowed only on the issue of jurisdiction and if the employees raise their grievance before the appropriate forum, nothing observed herein shall be construed to have been observed on the merits of the matter. There shall be no orders as to costs.