

**(1993) 02 BOM CK 0077**  
**In the Bombay High Court**  
**Case No : Appeal No. 1137 of 1990**

|                                        |            |
|----------------------------------------|------------|
| Krantikari Suraksha Rakshak Sanghatana | APPELLANT  |
| Vs                                     |            |
| S.V. Naik and Others                   | RESPONDENT |

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**Date of Decision :** 05-02-1993

**Acts Referred:**

**Citation :** (1993) 2 LLJ 1145

**Hon'ble Judges :** S.H. Kapadia, J; M.L. Pendse, J

**Bench :** Division Bench

**Advocate :** S.K. Singhavi, for the Appellant; C.J. Sawant, A.M. Vernekar and ors. and S.M. Shah, for the Respondent

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## Judgement

Kapadia, J

1. Being aggrieved by the summary rejection of Writ Petition No. 2523 of 1989 by the learned Single Judge vide order dated November 6, 1989, the present appeal has been filed by the petitioners.

2. The facts giving rise to this appeal, briefly, are as follows :

(a) In March 1987, one Suraksha Rakshak & General Kamagar Sena (hereinafter referred to as the said Sena) filed Complaint (ULP) No. 350 of 1987 under item 5 and item 9 of Schedule IV to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. By the said complaint, the Sena alleged that prior to February 1987, respondent No. 2-Company had engaged about 27 security guards. According to the said complaint, the guards were engaged by respondent No. 2-Company during the period 1980 to 1984. According to the complaint, in February/March 1987, without any prior notice, the said security guards are removed. In the circumstances, the above complaint was filed. The complaint proceeded to allege that the company was guilty of unfair labour practices under items 5 and 9 of Schedule IV to the Act which reads as follows :

"5. To show favouritism or partiality to one set of workers, regardless of merits.

9. Failure to implement award, settlement or agreement".

It was alleged that the 29 security guards were shown to be contract labour on the record of respondent No. 2-company; that this was an imbalance of labour contract; that the security agencies i.e. respondent No. 3 had not obtained the requisite licence under the Contract Labour (Regulation and Abolition) Act, 1971; and as a result, the said security guards were the direct and regular employees of respondent No. 2-company. It was further submitted that the respondent No. 2-company had not registered itself with the Security Guards Boards for Greater Bombay and Thane Districts under the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 and in the circumstances, the said concerned workmen must be considered to be direct and regular employees of respondent No. 2-company. It was further contended that in any event, there was disparity in the service conditions of regular security guards vis-a-vis the 29 security guards employed through respondent No. 3 and, therefore, there was a violation of the provisions of the Security Guards Act, 1981.

(b) To the said complaint, the respondent No. 2-company filed their say. The second respondents, by their written statement, stated that at no point of time, there was employer and employee relationship and that the respondent No. 2-company had no supervision or control over the security guards who were employed by respondent No. 3-agency with whom respondent No. 2-company had entered into a contract on April 10, 1980 and in the circumstances, it was submitted that respondent No. 2-company was not guilty of unfair labour practices as alleged. It was further submitted that respondent No. 2-company was registered under the Contract Labour Act, 1971 and it was pursuant to the said registration that the above contract dated April 10, 1980 was entered into with respondent No. 3-agency and, therefore, there was no violation of the Contract Labour Act. Respondent No. 2-company also denied that they had violated the provisions of the Security Guards Act, 1981.

(c) On the basis of the above pleadings, the Industrial Court by its impugned order dated September 1, 1989 came to the conclusion that the said 29 security guards were the employees of respondent No. 3-agency; that respondent No. 2-company was, therefore, not guilty of unfair labour practices as alleged; that there was no violation of the provisions of the Contract Labour Act, 1971 as the concerned employees were employed through the agency and as regards violation of Security Guards Act, 1981, the complaint was not maintainable under the ULP Act, 1971. Against the said order dated September 1, 1989 the present appellants who claim to be a representative Union of the security guards on the footing that the earlier Sanghatana did not represent the majority of the security guards, filed the above Writ Petition No. 2523 of 1989 which was summarily rejected on November 6, 1989. Against the said order, the present appeal has been filed.

3. Mr. Singhavi, the learned Counsel, appearing on behalf of the appellants submitted that respondent No. 2-company was the real employer as the said company had entered into an agreement with respondent No. 3-agency only as a subterfuge and that the real relationship of the security guards in question was with respondent No. 2-company and not with the agency. In this connection, Mr. Singhavi relied upon the fact that the respondent No. 3-agency had not obtained a licence under the Contract Labour Act, 1971 and in the circumstances, the said security guards were direct employees of respondent No. 2-company. Mr. Singhavi also submitted that in any event, there was violation of the provisions of the Security Guards Act, 1981 in as much as there was disparity between the service conditions of the said security guards employed by respondent No. 2-company. Mr. Singhavi accordingly submitted that provisions of item No. 5 and item No. 9 of Schedule IV to the said Act, 1971 would squarely apply.

4. There is no merit in the said contention of Mr. Singhavi on behalf of the appellants Schedule IV to the said Act, 1971 deals with unfair labour practices on the part of the employers. Item No. 5 of the said Schedule deals with the situation where employer shows partiality to one set of workers against the other set of workers regardless of merits whereas item No. 9 deals with the employer failing to implement award, settlement or agreement with his workers. The entire argument on behalf of the appellants proceeds on the basis that the relationship of employer and employee existed between the appellants on the one hand and respondent No. 2-company on the other hand. We cannot agree with the said submission in view of the fact that such a relationship between employer and employee cannot be presumed. Further, the Industrial Court under the ULP Act, 1971 has no jurisdiction to abolish the contract system and treat the above mentioned security as direct employees of respondent No.2. Respondent No.2 in their written statement categorically denied the relationship of employer and employee between the appellants and respondent No. 2. In the circumstance, the ULP Court had no jurisdiction to proceed on a presumption and come to the conclusion that respondent No. 2 was guilty of unfair labour practices. The complaint proceeds principally on the footing that as respondent No. 3-agency had not obtained a licence under the Contract Labour Act, the said security guards automatically became workmen of respondent No. 2. The facts mentioned in the complaint clearly proceeds on the presumption of relationship of employer and employee, which the Industrial Court found do not exist. In the absence of any adjudication, it is not open to the ULP Court to abolish the contract system and treat the security guards as direct employees of respondent No. 2-company. In the circumstances, the Industrial Court rightly dismissed the complaint filed under the ULP Act, 1971. As regards the breach of provisions of the Security Guards Act, 1981 was a complete Code and if there was any alleged breach, it was open to the appellants to move the Security Guards Board under the said Act, 1981. In the circumstances, we do not find any merit in this appeal and the same stands dismissed. However, it is made clear that the appellants are entitled to move the appropriate competent Court/authority for the purpose of

adjudication of their rights and the dismissal of this Appeal will no preclude the appellants from such adjudication.

5. In the circumstances, the appeal fails and is dismissed with not orders as to costs.