
(2001) 10 BOM CK 0083

In the Bombay High Court

Case No : Writ Petition No's. 1872, 2030, 2033, 2037, 2041, 2042 and 2043 of 2001

Lokmat

APPELLANT

Vs

Dnyaneshwar Haribhau Kadu and Others

RESPONDENT

Date of Decision : 24-10-2001

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (2002) 2 ALLMR 574 : (2002) 2 BomCR 60 : (2002) 93 FLR 538

Hon'ble Judges : P.S. Brahme, J

Bench : Single Bench

Advocate : R.M. Darda, for the Appellant; S.D. Thakur, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Brahme, J.—These writ petitions are finally heard with consent of Counsel for the parties. In all these petitions, common question is involved. Therefore, these petitions are being disposed of by this common judgment.

2. The respondents claiming to be the employees of petitioner have filed complaints before the Industrial Court, Nagpur under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short the M.R.T.U. & P.U.L.P. Act). In these complaints respondents sought the reliefs to grant the status and all other privileges and benefits that are applicable to regular and permanent peons with retrospective effect and in any case from the date on which the complainants completed 240 days of continuous service and to give to the complainants the benefits are made applicable through Palekar & Bachawat Report. These complaints are still pending before the Industrial Court. The petitioner has filed reply to the complaints on 15-7- 1998, wherein relationship of employer employees between petitioner and respondents has been denied. The petitioner also filed an application dated 7-4-2001 for dismissal of the complaints as not maintainable, but no orders have been passed

by the Industrial Court on that application. However, the Industrial Court proceeded with the complaints and recorded evidence of the parties to the complaints. It appears that when the hearing part of the complaints was almost on completion, the petitioner filed application dated 10-4-2001 for deciding the earlier applications before proceeding in the matter. The petitioner has relied upon three judgments of the Apex Court wherein it has been held that when the relationship of employer employees is denied, then the complaint filed by the complainant under the M.R.T.U. & P.U.L.P. Act cannot be maintained. In spite of clear position, the learned Member of the Industrial Court passed impugned order dated 20-4-2001 observing that the objections raised by the petitioner will be taken into consideration while deciding the complaints on merit. It is this order, passed by the Industrial Court which is subject matter of challenge in all these petitions.

3. Before going into the rival contentions and submissions of the parties, it is necessary to bear in mind the fact that the complaints filed by the respondents before the Industrial Court in the year 1996 are still pending and the hearing of the complaints is being stalled, because of the pendency of these petitions in the High Court. It is also worthwhile to mention that this Court has already disposed of writ petition filed by the respondents (bearing Writ Petition No. 1670/1998) by order dated 15-6-1998 confirming the order of the Industrial Court rejecting the prayer for interim relief. But while disposing of that petition, this Court directed the Industrial Court to decide the complaints as early as possible preferably by the end of the year. It appears that the Industrial Court did not accede to the request of the petitioner to dismiss the complaints, but decided to decide the complaints on merits only because this Court has directed to decide the complaints within stipulated period.

4. In addition to this, the Industrial Court observed that looking to the facts and circumstances of the complaints and the stage at which the proceedings were stalled, it would not be just and proper to dismiss the complaints, but in the fairness of both the sides better to co-operate the Court to decide the complaints on merit as early as possible. The learned member of the Industrial Court was mindful of the recent judgments of the Hon. Supreme Court reported in :

i) General Labour Union (Red Flag), Bombay Vs. Ahmedabad Mfg. and Calico Printing Co. Ltd. and Others, .

ii) 2001(2) B.C.R. 324 : 2001 1 C.L.R. 532, Vivid Kamgar Sabha v. Kalyani Steels Ltd and another, and

iii) 2001 (2) B.C.R. 822 : 2001 (1) C.L.R. 754, Cipla Ltd. v. Maharashtra General Kamgar Union and others.

5. In all these three cases complaints were filed on behalf of employees/Union against employer under the provisions of M.R.T.U. & P.U.L.P. Act before the Industrial Court. These complaints were not dismissed by the Industrial Court at the threshold on the objection raised by the employers that the concerned

employees were contract labours and there was no employer-employees relationship. In those matters both the sides had produced sufficient evidence and material on record to enable the Industrial Court to hold that there was no employer-employees relationship. In the aforesaid circumstances, the Supreme Court has held that if the employees failed to establish employer-employees relationship by adducing sufficient material, it cannot be held that the Principal Employer was guilty of any unfair labour practice alleged by the employees. It was in that context the Supreme Court observed that the provisions of the M.R.T.U. & P.U.L.P. 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 of workman is established in an appropriate forum that the complaint could be made under the provisions of the M.R.T.U. & P.U.L.P. Act. That is how the Apex Court in all these cases dismissed the complaints.

6. As stated earlier, the Industrial Court thought it fit in the interest of parties to decide the complaints on merit as early as possible. The objections raised by the petitioner regarding maintainability of the complaints even on the basis of the judgments of the Supreme Court could be considered while deciding the complaints on merits. That is how, the Industrial Court observed that the objections raised by the petitioner will be taken into consideration while deciding the complaint on merits. In substance, the Industrial Court has not rejected the application filed by the petitioner claiming dismissal of the complaint.

7. Mr. Darda, learned Counsel for the petitioner has strongly urged how the impugned order of the Industrial Court was bad in law and was not sustainable at all in the light of aforesaid judgments of the Supreme Court. He submitted that Supreme Court has held that when relationship of employer employees is denied and the industrial dispute is to be tried, which is a condition precedent, without raising such dispute, the complaint is not maintainable under the provisions of the M.R.T.U. and P.U.L.P. Act. It is submitted that the question of jurisdiction raised in the application filed for dismissal of the complaints goes to the root of the maintainability of the complaints and therefore, so long as that issue is not first decided, the Industrial Court would get no jurisdiction to proceed further in the matter and decide the complaint on merits. He also submitted that the Industrial Court should have dismissed the complaints. Shri Darda has pointed out from the beginning that, in the written statement, it was stressed by the petitioner that there was no master-servant relationship. He also referred to the order passed by the Industrial Court rejecting the interim relief sought for by the complainants wherein, the Industrial Court observed :

"It would not be unjust and proper to fix the responsibility on the respondent directing them to pay minimum wages till pending decision of interim application Exhibit 2 or till final decision of the main complaint."

It is submitted this was the observation of the Industrial Court as petitioner has

denied at the inception, the relationship of employer-employees between the petitioner and respondents. Therefore, it is submitted that the Industrial Court has flouted the mandate and dictate of the Apex Court.

8. Shri Darda, also placed reliance on the decisions of this Court reported in Hindustan Coca Cola Bottling S/W Pvt. Ltd. and Another Vs. Narayan Rawal and Others, , and submitted that as the decision would be a decision as to the maintainability of the complaint, the Tribunal will be duty bound to frame any issue as preliminary issue on that count and after framing the preliminary issues, to decide that point. It is observed further that in the light of the matter of following the judgment in the case of Cipla Ltd. (supra) the Court/Tribunal functioning under the M.R.T.U. & P.U.L.P. Act is directed to frame issue as to jurisdiction of the Labour Court/Tribunal to hear the complaint and after framing such issue to dispose of the complaints according to law. However, after carefully going through the decision, it is found that in that case though the issue was not framed, it was found that it could be deemed that the issue arose and consequently the issue had been answered against the petitioners therein. That is how in that case petition on that count was not maintainable.

9. Mr. Thakur, learned Counsel appearing for respondents submitted that in the judgments of the Supreme Court, the issue related to the contract labours. There is special provision and legislation about the abolition of contract labour system i.e. a Contract Labour Abolition Act, 1970. In such cases of contract labour when the relationship of employer and employees is disputed, then a complaint under the M.R.T.U. & P.U.L.P. Act, is not maintainable unless and until the status as a workman is established in the appropriate forum. He further submitted that this was the legal position as per the pronouncements of the Apex Court reported in 1995 S.C.C.1166, Gujarat Electricity Board, case wherein it was held that if there is a genuine labour contract between principal employer and the contractor, the authority to abolish the contract labour vests in the appropriate Government and not in any Court including the industrial adjudicator. The industrial adjudicator would after giving opportunity to the parties to place the material before it, decide whether the workmen be absorbed by the principal employer, if so, how many of them and on what terms. If, however, the so-called contract is not genuine, but is a sham and camouflage to hide the reality, section 10 would not apply and workmen can raise an Industrial Dispute for relief that they should be deemed to be the employees of the principal employer. The Court or industrial adjudicator would have jurisdiction to entertain such a dispute and grant necessary relief.

10. He further submitted that a recent decision of the Supreme Court reiterated in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , and has held that even in case of contract labour, there can be adjudication as to the regularisation of the employment by the Industrial Court/Tribunal under the M.R.T.U. & P.U.L.P. Act. If the contract is found to be not genuine, but a mere camouflage, the so called contract labour

will have to be treated as employee of the Principal Employer, who shall be directed to regularise the services of the contract labour in the establishment concerned. So it is within the jurisdiction of the Industrial Court under the provisions of the M.R.T.U. & P.U.L.P. Act to decide the status of a workmen even in case of contract labour. The learned Counsel submitted that the Industrial Court has committed no error in proceeding with the matter and to decide the issue as to maintainability of the complaints while deciding the complaints on merit. He also placed reliance on the decision of this Court; reported in 2001 (II) L.L.J. 230 (supra). In fact in that case the employees were engaged as contract labour and the employer company had disputed direct relationship of employees vis-a-vis the employer company. The complaints were filed before the Industrial Court claiming the status of regular employee. The employer company had given application for dismissal of the complaint following the aforesaid recent judgments of the Supreme Court. As their applications were rejected by the Industrial Court, the matter went to the High Court in writ petition under Article 226 of the Constitution of India. In that case reliance was placed on two decisions of the Supreme Court for dismissal of complaint. However, the Court dismissed the petition upholding the order passed by the Industrial Court. It was observed that it is not a ratio of the aforesaid two judgments of the Supreme Court to dismiss the complaints at the threshold, the moment the principle employer whispers an objection in respect of employer-employee relationship. It is found that the Industrial Court will have to go into the question including the issue of real relationship of the alleged contract labour i.e. the employees with the principal employer. The Industrial Court will also have to address itself to the issue whether the supplier of the labour had become a contractor and what would be the deeming effect of non-rejection of the petitioners and non-obtaining the valid licence under the Act on the relationship. It is observed in the judgment before the Supreme Court the whole evidence and entire material was placed before the Industrial Court on the basis of which it was found that there was no employer-employees relationship between the contract labour and principal employer. It is in that background that the Supreme Court in those judgments held that the complaint was not maintainable. This Court also found that the Industrial Court was justified in postponing the consideration of the objection raised by the petitioner as to the maintainability of the complaints on the ground of dispute as to the relationship of employer-employees. He, therefore, urged that the Industrial Court was right in considering to decide the matter of merit, instead of deciding the issue raised by the petitioners in the application exhibit 85 independently as preliminary issue. Learned Counsel pointed out that this Court while disposing the writ petition has directed the Industrial Court to decide the complaints by the end of 1998.

11. In the background of this, the Industrial Court in fact proceeded with the matter and almost all evidence has been recorded. It was at the fag end in the month of April, 2001, that the petitioner filed application before the Industrial Court requesting to dismiss the complaints following two recent judgments of the

Supreme Court. The Industrial Court did not pass any order on that application and therefore, petitioner again filed another application on which the order impugned came to be passed. The learned Counsel for respondent submitted that, petition merits no consideration at all and the same should be dismissed with a direction to the Industrial Court to proceed with the matters and decide the same as expeditiously as possible as the respondents employees are out of employment since 1996.

12. It is not disputed that the complaints filed before the Industrial Court under the provisions of M.R.T.U. & P.U.L.P. Act raising dispute has to be decided on the basis of relationship of employer and employees. Therefore, if the employer has disputed the relationship in the complaint filed by the employee by taking a specific plea in his written statement before the Industrial Court, then it is incumbent on the employee complainant to establish that relationship between them. It is also not disputed that in the complaints at hand filed by respondents before the Industrial Court, petitioner has specifically denied the factum of relationship of employer-employees between the petitioner and complainants. It is therefore, needless to say that and also accepted by the respondents/complainants that they have to establish said relationship on the basis of evidence that has been led before the Industrial Court. The contention of the petitioner before the Industrial Court and before the High Court is that as per the recent judgments of the Supreme Court (*supra*) the complaint should be dismissed as petitioner denied the relationship of employer-employee. I have carefully gone through the judgment of the Apex Court referred by the Counsel for the petitioner. It is very difficult to agree with the learned Counsel for the petitioner Shri Darda that the Supreme Court has laid down that the complaint should be dismissed by the Industrial Court when the employer has raised a dispute as to the relationship. It is pertinent to note that in all the matters which were before the Supreme Court, Industrial Court had already decided the complaints finally after recording the evidence and on completion of full-fledged trial. These complaints were not dismissed at the threshold on the objections raised by the respondents that the concerned employees were contract labour and that there was no employer-employee relationship. In those matters, both the sides had produced sufficient evidence and material on record to enable the Industrial Court to hold that there was no employer-employee relationship. In the aforesaid circumstances the Supreme Court held that, if the employees failed to establish employer-employees relationship by adducing sufficient material, it can not be held that principal employer was guilty of any unfair labour practice alleged by the employees. That is how the Supreme Court in the matters before it found that the complaints were not maintainable and so the same should have been dismissed by the Industrial Court. Again in case of contract labour the legal position that stood then was that employee whose employment was under labour contract was required to get establish his status as employee of the principal employer by approaching the appropriate forum. Therefore, in case of contract labour, unless and until the relationship of employer and employees is

established, no complaint could be entertained before the Industrial Court under the M.R.T.U. and P.U.L.P. Act.

13. But then as rightly pointed out by the Counsel for respondent, the recent pronouncement of the Apex Court reported in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , even in case of contract labour, the adjudication as to the status of an employee vis-a-vis Principal Employer is to be resolved by the Industrial Court. Therefore, considering law laid down by the Apex Court in the recent decisions referred by the Counsel for petitioner, it has to be said that the Industrial Court was justified in not dismissing the complaints. The submission of the learned Counsel for the respondent that the decisions of the Apex Court on which the reliance has been placed by the petitioner heavily are not applicable to the case before hand, holds good as the cases before the Supreme Court exclusively related to the contract labour. In addition to that as a consequence of the recent pronouncement of the Apex Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , it is the Industrial Court which has jurisdiction to decide the complaints even in case of contract labours. If that is so, then it goes without saying that the Industrial Court has to decide the issue as to the relationship of employer-employees between the parties before it while adjudicating the dispute raised in the complaint. It is not the mandate of the Supreme Court in the judgment referred by the Counsel for the petitioner that complaint should be dismissed at the threshold without making any inquiry as to the issue of relationship of master-servant. It is in this background, the Industrial Court has committed no error in deciding the issue alongwith other issues while deciding the complaints on merits.

14. It is a matter of record that the parties have already led evidence before the Industrial Court. It appears that the petitioner filed application for dismissing the complaint when the recording of evidence on the side of complainants was over and the petitioner was asked to proceed to lead the evidence. It may be recalled that this Court while disposing of the writ petition filed earlier by respondents directed the Industrial Court to dispose of the complaints as expeditiously as possible on priority and possibly by the end of December, 1998. So the state of facts then existed when petitioner gave application for dismissal of the complaints or for deciding the preliminary issue in respect of the plea raised by him disputedly the relationship, the mandate by this Court for disposing the matter was already over. Almost three years had passed and the Industrial Court was in the midst of recording evidence. Therefore, it was in the fitness of the things and also as observed by the Industrial Court in the interest of parties, that the Industrial Court decided to take into consideration the objection as to the maintainability of the complaints while deciding the complaints on merits. It would be travesty of justice, to direct the Industrial Court now to decide the preliminary issue relating to the objection raised by the petitioner as to the maintainability of the complaints on the ground of dispute as to the relationship of employer-employees. The fact that complainants employees are out of

employment since 1996 cannot be lost sight of. In such circumstances, the Industrial Court has rightly postponed the consideration objection raised by the petitioner. The Industrial Court was right in saying that the issue as to relationship of employer and employees between the parties will be framed and will be decided on merits while deciding the complaints as a whole on merit. As stated earlier, the view taken by the Industrial Court to consider the objections raised by petitioner while deciding the complaints on merit is proper. No prejudice is caused to the petitioner. It is difficult to agree with the submissions of the learned Counsel for the petitioner that the Industrial Court has taken the view to decide all the issues raised in the complaint while deciding the complaint on merit for seeking convenience of the complainants employees. It is found that the decision taken by the Industrial Court is not contrary to the law laid down by the Apex Court in the recent judgments. It has to be said that having regard to the facts and circumstances of the case the propriety demanded that the complaints should be disposed of within shortest period possible. In other words, there was no propriety to segregate the issue relating to the relationship of employer-employees between the petitioner and the complainants and to decide only that issue.

15. Therefore, considering the facts and circumstances of the case, as also the legal position, there is no merit in the challenge to the impugned order in the petitions. As such the petitions are dismissed. The ad interim order passed in Writ Petition No. 1872/20001 stands vacated. The Industrial Court is directed to proceed with the complaints and decide the same within three months from the receipt of the communication of this order. Parties to appear before the Industrial Court, Nagpur on 1-11-2001. The Rule stands discharged in the aforesaid terms. No orders as to costs.