

(2004) 07 BOM CK 0069

In the Bombay High Court

Case No : O.O.C.J. Appeal No. 466 of 2004 in Writ Petition No. 1857 of 2004

Quadricon Pvt. Ltd. and Others

APPELLANT

Vs

Maxi D'Souza and Others

RESPONDENT

Date of Decision : 28-07-2004

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28(1), 30(2)

Citation : (2005) 1 BomCR 759 : (2005) 1 LLJ 75

Hon'ble Judges : R.M. Lodha, J; J.P. Devadhar, J

Bench : Division Bench

Advocate : J.P. Cama, K.P. Anilkumar, instructed by Thakordas and Madgavkar, for the Appellant; P.S. Chavan, for Respondents No. 1 to 5, for the Respondent

Judgement

R.M. Lodha, J.—Heard Mr. J.P. Cama, the learned senior counsel for the appellants and Mr. P.S. Chavan, the learned counsel for respondent Nos. 1 to 15.

2. Admit. Returnable forthwith.

3. Mr. P.S. Chavan, the learned counsel waives service for respondent Nos. 1 to 15. Service on respondent No. 16 is dispensed with being formal party. We also dispense with the paper books.

4. By consent of the learned senior counsel and the learned counsel appearing for the parties, the appeal is treated on board and heard finally at this stage.

5. The respondent Nos. 1 to 15 are the complainants in the complaint filed under Schedule-II and Item Nos. 6, 9 and 10 of Schedule IV read with Section 28(1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "MRTU & PULP Act"). The said complaint is directed against the present appellants.

6. The complainants averred in the complaint that they are employees of appellant No. 1 company. They alleged that the company is engaged in unfair

labour practices. They prayed for direction to the first appellant-company to cease to engage in unfair labour practices and give the facilities and privileges of permanent employees to all the complainants and for an order restraining the company from terminating their services and from removing, shifting, selling, transferring or alienating in any way the plant and machinery. The complainants also made an application for interim relief. The appellants filed reply to the application and opposed the complainant's prayer for grant of interim relief. The appellants denied the relationship of employer and employee between the parties.

7. After hearing the parties and on the basis of the available material, particularly the identity cards, the Industrial Court vide its order dated June 1, 2004 granted interim relief in favour of the complainants and restrained the appellants from terminating the services of the complainants without following due process of law pending hearing and final disposal of the complaint. The appellants were also restrained from removing, shifting, selling, transferring or alienating in any manner the plant and machinery.

8. The present appellants aggrieved by the order of the learned Industrial Court dated June 1, 2004 granting interim relief to the complainants filed a petition being Writ Petition No. 1857 of 2004. The learned single Judge after hearing the parties dismissed the writ petition by order dated July, 13, 2004. Aggrieved thereby, the appellants have preferred this appeal.

9. The Industrial Court in its order dated June 1, 2004 held that the contention raised by the present appellant No. 1 that there is no employer-employee relationship between the present appellant No. 1 and the complainants cannot be prima facie believed. The learned single Judge observed that the present appellant No. 1 has made a patently unsustainable attempt to defeat the jurisdiction of the Industrial Court by a bold denial of existence of the employer and employee relationship.

10. In *Cipla Ltd. Vs. Maharashtra General Kamgar Union and Others*, , the Supreme Court observed thus at pp. 1067 & 1068 of LLJ:

"8. But the 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 labour 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 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 the 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 Tribunal 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 a 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 case 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 the employer-employee cannot 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 recognised 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 v. Kalyani Steels Ltd.* and Anr. 2001 I LLJ 569.

11. Next decision relied upon by Shri Singhvi is the *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, to contend that even in cases arising u/s 33-C(2) of the Industrial Disputes Act the scope, though very limited, certain incidental questions can be gone into like a claim for special allowance for operating adding machine which may not be based on the Sastry Award made under the provisions of Chapter V-A. The learned counsel pointed out that in the event we were to hold that it is only in clear cases or undisputed cases the Labour Court or the Industrial Tribunal under the Act can examine the complaints made

thereunder, the whole provision would be rendered otiose and in each of those cases provisions of the Bombay Industrial Relations Act, 1946 or the Industrial Disputes Act will have to be invoked. We are afraid that this argument cannot be sustained for the fact that even in respect of claims arising u/s 33-C(2) appropriate dispute can be raised in terms of Section 10 of the Industrial Disputes Act and that has not been the position in the present case. Nor can we say that even in cases where employer-employee relationship is undisputed or indisputably referring to the history of relationship between the parties dispute can be settled and not in a case of the present nature where it is clear that the workmen are working under a contract. But it is only a veil and that will have to be lifted to establish the relationship between the parties. That exercise, we are afraid, can also be done by the Industrial Tribunal under the Bombay Industrial Relations Act, 1946 or under the Industrial Disputes Act. Therefore, we are afraid that the contention advanced very ably by Shri Singhvi on behalf of the respondents cannot be accepted. Therefore, we hold that the High Court went far beyond the scope of the provisions of the Act and did not correctly understand the decisions of this Court in *Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat v. Hind Mazdoor Sabha and Ors.* (supra) and *General Labour Union (Red Flag), Bombay v. Ahmedabad Mfg. And Calico Printing Co. Ltd. and Ors.* (supra). The correct interpretation of these decisions will lead to the result, which we have stated in the course of this order."

11. In the case of *Vividh Kamgar Sabha Vs. Kalyani Steels Ltd. and Another*, the view of the Supreme Court is the same that if the employer-employee relationship is undisputed or indisputable then the complaint under MRTU & PULP Act is maintainable.

12. Conversely when the relationship of employer-employee is disputed or is questionable, the Court constituted under the MRTU & PULP Act has no jurisdiction to entertain the complaint unless the status of relationship of employer and employee is first determined in the proceedings under the BIR Act, 1946 or the Industrial Disputes Act. Logically, therefore, in the complaint filed under the MRTU & PULP Act, the Court constituted thereunder is not competent to adjudicate the relationship of employer-employee.

13. In the case in hand the relationship of employer-employee has been called in question by the first appellant. The thing then remained to be seen by the Industrial Court was to find out whether the relationship of employer-employee is questionable. What is significant to be noticed is that the day on which the interim order came to be passed, the Industrial Court also passed an order directing the first appellant to produce muster roll and wage registers from 1990 till March, 2004 of its employees and also produce the leave records maintained by the first appellant for the period 1990 until March, 2004 of its employees. That suggests that the Industrial Court was not sure whether relationship of employer-employee was capable of being questioned by the first appellant. The Industrial Court constituted under the MRTU & PULP Act is not clothed with the

jurisdiction to adjudicate the employer-employee relationship nor there is anything like prima facie consideration of relationship of employer-employee in the complaint under the said Act. In our considered view since the jurisdiction of the Industrial Court in passing the interim order u/s 30(2) is founded upon the consideration of the aspect whether the complaint u/s 28 is entertainable and that depends on the relationship of employer-employee, in a case like this where such relationship is called in question, the Industrial Court was required to consider the aspect as to whether the employer-employee relationship is unquestionable on the basis of the pleadings of the parties and the available material and then proceed with consideration of prayer for interim relief if it was of the view that employer-employee relationship was unquestionable and not in the manner he did; prima facie overruled the objection of the first appellant, granted interim relief and then decided to hold the enquiry into relationship of employer-employee by calling for record from first appellant. This aspect has been overlooked by the learned single Judge.

14. We, accordingly, set aside the order of the learned single Judge dated July 13, 2004 and the orders of the learned Industrial Court, Mumbai dated June 1, 2004 (Exhibit "L" and "M"). The application made by the complainants u/s 30(2) of the MRTU & PULP Act for interim relief is restored to the file of the Industrial Court, Mumbai for fresh consideration in the light of the observations made hereinabove. The parties are directed to produce entire material in support of their rival case within two weeks from today, if not produced so far. We clarify that it would be open to the Industrial Court to call for further material from the appellants if the said Court finds that necessary.

15. The Industrial Court is directed to hear and decide the application for interim relief as early as possible and preferably within four weeks from the date of receipt of this order.

16. We direct the appellants to maintain the status-quo in respect of the plant and machinery as well as the complainants as obtaining today until the disposal of application u/s 30(2).

17. The Industrial Court shall obviously keep in mind our observations made hereinabove and the judgments of the Supreme Court in the case of Cipla Limited (supra) and Kalyani Steels Limited (supra) and the Division Bench judgment of this Court in the case of Hindustan Coca Cola Bottling S/W Pvt. Ltd. v. Bhartiya Kamgar Sena and Ors. 2002 I LLJ 380. No costs.