

(2011) 03 SC CK 0029

In the Supreme Court Of India

Case No : Civil Appeal No. 5077 of 2006

Raymond Ltd. and Another

APPELLANT

Vs

Tukaram Tanaji Mandhare and Another

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 3(13), 3(14)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 3(5)

Citation : (2011) AIRSCW 1715 : (2011) 3 BomCR 10 : (2011) 129 FLR 259 : (2011) 3 JT 504 : (2011) 2 LLJ 314 : (2011) LLR 374 : (2011) 3 SCALE 389 : (2011) 3 SCC 752 : (2011) 1 SCC(L&S) 547 : (2011) 3 SCR 753 : (2011) 2 Supreme 571 : (2011) 2 UJ 1088

Hon'ble Judges : Markandey Katju, J;Gyan Sudha Mishra, J

Bench : Division Bench

Advocate : R.F. Nariman, Meena Doshi, Jayashree Wad, Ashish Wad, Tamil Wad, Sameer Abhyankar and Dipti, for J.S. Wad and Co, for the Appellant; Vinay Navare and Yogendra Pendse for Naresh Kumar, for the Respondent

Judgement

Markandey Katju, J.—This appeal has been filed against the impugned judgment of the Full Bench of the High Court of Judicature at Bombay in Writ Petition Nos. Nos. 1204/2003, 7673/2003 and 9449/2003.

2. Heard learned Counsel for the parties.

3. The facts of the case are that the Petitioners filed complaints u/s 28 read with items 1 (a)(b), (d) and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the MRTU and PULP Act), before the Industrial Court/Labour Court for certain reliefs claiming that they are employees of the Respondent company. The Respondent company in all these writ petitions has disputed the status of the employees and has contended in its written statement that there is no relationship of employer employee with any of the Petitioners. The company has contended that the complainants were employed through the contractors and

that the issue regarding maintainability of the complaints would have to be decided by the court. During the pendency of these complaints, the judgments in the case of Vividh Kamgar Sabha Vs. Kalyani Steels Ltd. and Another, and in the case of Cipla Ltd. v. Maharashtra General Kamgar Union (2001) 3 SCC 101 were pronounced by the this Court, and relying upon these decisions, an application was made by the Respondent company before the court that the complaints were liable to be dismissed as there was no employer employee relationship between it and the complainants. The Industrial Court/Labour Court upheld the preliminary objection raised by the Respondent company by holding that the judgments in Kalyani Steel Ltd. and Cipla Ltd. (supra) were applicable to the facts involved in the complaints and, therefore, the complaints deserve to be dismissed. The complaints were accordingly dismissed.

4. Thereafter the Petitioners filed the present writ petitions challenging the dismissal of the complaints. In the meantime by its judgment in Sarva Shramik Sangh Vs. Indian Smelting and Refining Co. Ltd. and Others, this Court has reiterated the view taken in Kalyani Steel Ltd. (supra) and Cipla Ltd. (supra).

5. The learned single Judge before whom the writ petitions came up for hearing noted that all these cases decided by the this Court were in respect of industries governed by the Industrial Disputes Act, 1947, whereas the present petition relates to an industry covered by the provisions of the Bombay Industrial Relations Act, 1946 (hereinafter referred to as the BIR Act). The learned single Judge noted that in the case of Dattatraya Kashinath and Others Vs. Chhatrapati Sahakari Sakhar Karkhana Ltd., Pune and Others, and in Sakhar Kamgar Union v. Shri Chhatrapati Rajaram Sahakari Sakhar Karkhana Ltd. and Ors. 1996 II CLR 67 Srikrishna J., as he then was, had held that a conjoint reading of Section 3(5) of the MRTU and PULP Act and Sections 3(13) and 3(14) of the BIR Act would indicate that even a person employed through a contractor in an industry governed by the BIR Act is regarded as an employee under the MRTU and PULP Act and the complaint filed by such an employee is maintainable under the MRTU and PULP Act. The learned single Judge however, felt that another learned single Judge of this Court (Khandeparkar J.) in Nagraj Gowda and Ors. v. Tata Hydro Electric Power Supply Co. Ltd. Bombay and Ors. 2003 III CLR 358 had expressed a contrary view considering the judgments of the this Court in Kalyani Steel Ltd, Cipla Ltd. (supra) and Sarva Shramik Sangh (supra) as also the judgment of the Division Bench of this Court in the case of Hindustan Coca Cola Bottling Pvt. Ltd. v. Bharatiya Kamgar Sena 2001 III CLR 1025. The learned single Judge therefore decided to make a reference to a larger Bench in view of the conflicting decisions of the learned single Judges of the High Court.

6. The questions, which were referred to the Full Bench of the High Court were:

1) Whether a person who is employed by a contractor who undertakes contracts for the execution of any of the whole of the work or any part of the work which is ordinarily work of the undertaking is an employee within the meaning of Section 3(5) of the MRTU and PULP Act?

2) Whether a complaint filed under the MRTU and PULP Act by an employee as defined u/s 3(13) of the Bombay Industrial Relations Act, is maintainable although no direct relationship of employer employee exists between him and the principal employer?

3) Whether a complaint filed under the MRTU and PULP Act by employees u/s 3(13) of the BIR Act can be dismissed if the employer claims that they are not his direct employees but are employed through a contractor, in view of the judgments of the Supreme Court in Cipla (supra), Kalyani Steels Ltd. (supra) and Sarva Shramik Sangh v. Indian Smelting and Refining Co. Ltd. (supra)

7. The Full Bench of the Bombay High Court answered the question numbers 1 and 2 referred to it in the affirmative, and question number 3 in the negative provided the contractors workmen were employed to do the work of the whole or part of the undertaking.

8. It is this decision which has been challenged before us.

9. A large numbers of decisions have been cited before us. e.g. Vividh Kamgar Sabha Vs. Kalyani Steels Ltd. and Another, Cipla v. MGK Union (2001) 3 SCC 101 ; Sarva Shramik Sangh Vs. Indian Smelting and Refining Co. Ltd. and Others, Hindustan Lever Ltd. Vs. Ashok Vishnu Kate and others, N.T.P.C. and Others Vs. Badri Singh Thakur and Others, Hindalco Industries Ltd. Vs. Association of Engineering Workers, ; Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others, The Saraspur Mills Co. Ltd. Vs. Ramanlal Chimanlal and Others, ; Shramik Uttarsh Sabha Vs. Raymond Woolen Mills Ltd. and others,

10. In our opinion, in view of the difference of opinion in some of these decisions and the importance of the controversy involved and its application particularly in the State of Maharashtra, an authoritative decision is required by a larger bench on the issues involved.

11. Hence, we refer the matter to a larger bench on the issues referred to above.

12. Let the papers of this case be placed before Hon'ble the Chief Justice of India for constituting a larger bench.