

(2007) 10 BOM CK 0137
In the Bombay High Court
Case No : L.P.A. No's. 102 and 103 of 2007

Sarva Shramik Sangh

APPELLANT

Vs

Janprabha Offset Works and Another

RESPONDENT

Date of Decision : 23-10-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (2008) 1 LLJ 271

Hon'ble Judges : N.V. Dabholkar, J; M.G. Gaikwad, J

Bench : Division Bench

Advocate : V.B. Patil, for the Appellant; T.K. Prabhakaran and U.S. Sawaji, for the Respondent

Final Decision : Dismissed

Judgement

M.G. Gaikwad, J.—Heard learned advocates for respective parties. With consent of parties, appeals are heard and finally decided at the stage of admission.

2. These appeals are directed against a common judgment in Writ Petitions No. 854/2003 and 925/2003 whereby the learned single Judge by his judgment dated March 6, 2007 allowed both the writ petitions and set aside the order passed by learned Industrial Court Jalgaon in Complaint ULP No. 482/1999. In the original complaint, the press is respondent No. 1 and the newspaper is respondent No. 2. Hence in the judgment we are going to refer the press and paper as respondent No. 1 and respondent No. 2 respectively, although they are recited in different order in the two appeals.

3. The appellant Union filed Complaint u/s 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 in industrial Court at Nasik alleging unfair labour practices. The Complaint came to be filed through one S.N. Patil, General Secretary of the complainant Union. The unfair labour practice alleged was under Item 9 of Schedule IV. Respondents 1 and 2 in

the complaint are alleged to be different divisions of one establishment. The complainant union is a registered union bearing Registration No. 4672 dated April 8, 1964 and is having connection with the affairs of the respondents. The respondent establishment publishes news paper Janashakti. It was being printed from respondent No. 1. The news paper Janashakti is owned by trust by name Daily Janashakti Trust. Respondent No. 2 looks after the entire work of this establishment. Respondent No. 2 is also a member of the complainant union and is responsible for the service matters of the employees (workers) in this establishment. As such it is alleged that respondents 1 and 2 are the two different divisions of one establishment.

4. The appellant union came with a case that the workers named in Schedule "B" with the complaint are employees of the respondent establishment and are the members of complainant union. The respondents practice unfair labour practice by not making payment as per law and refusing other benefits. The complainant union made efforts to resolve the dispute and secure benefits as per demands of the employees. The respondents are under obligation to make payment and give other benefits to the employees as per recommendations of Bacchavat commission. Complainant union by its representation dated March 29, 1990 made request to pay the wages and other benefits to the employees as per recommendations of Bacchavat Commission. Instead of offering benefits, the respondent employer terminated services of five employees. Said termination is challenged in another proceeding. The union approached Assistant Commissioner of Labour for conciliation of the matter but no settlement took place, hence the union lodged the Complaint in industrial Court alleging unfair labour practice seeking direction to respondent to implement recommendations of Bacchavat Commission and give benefits to the employees since January 14, 1988.

5. Respondents 1 and 2 appeared before industrial Court and contested the matter on the contentions raised in their written statements. Though separate written statements came to be filed, the contentions raised by them are similar. They have denied that they are engaged in unfair labour practice. As regards status of union objection was raised that the complaint filed by union is not maintainable as the union had no locus-standi to file the complaint. They have pleaded ignorance as to whether workers are the members of complainant union and whether they have given authority to the union to file the complaint. Both the respondents denied that they are part and parcel of one establishment. According to them, respondent No. 1 printing press is a partnership firm registered under Partnership Act and respondent No. 2 is a Trust registered under the Bombay Public Trust Act and are different entities. One complaint against them is not maintainable and the complaint is liable to be dismissed on account of misjoinder of parties. One more contention has also been raised that Bacchavat Commission Report is not applicable to respondent No. 1, so there is no question of payment to the workers as per the said recommendations. The main contention raised by respondent is that the industrial Court had no jurisdiction to entertain the complaint. According to them, as there is dispute

about employer and employee relationship, unless the Industrial Tribunal decides the dispute under Industrial Disputes Act, the industrial Court has no jurisdiction to entertain the complaint under MRTU & PULP Act, 1971. Respondent No. 2 raised specific contention that the workers for whom the union claimed to have authority to file the complaint were not the workers employed by respondent No. 2.

6. The industrial Court framed two issues as to whether the complaint filed by complainant union is tenable or whether it is barred by misjoinder of parties. The third issue framed was about the alleged unfair labour practice. On behalf of the union, one witness came to be examined and certain documents were also filed on record. No evidence was led on behalf of the respondents. The learned Member of industrial Court observed that it was a fit case to draw adverse inference against respondents as they did not adduce evidence. Relying upon the evidence led by complainant union finding came to be recorded that complaint lodged under MRTU & PULP Act is maintainable. Finding also came to be recorded that the respondents 1 and 2 are the separate divisions of one establishment. The respondent establishment is held to have committed unfair labour practice and directions came to be issued against the respondents to desist from continuing the unfair labour practice, and to provide benefits of Bacchavat Commission award to four employees named in the order.

7. Feeling aggrieved with the order of (industrial Court, respondents 1 and 2 approached this Court by filing two separate Writ Petitions. Both Writ Petitions were heard and decided by learned single Judge. The learned single Judge was pleased to hold that the relationship of employer and employee being disputed, the industrial Court had no jurisdiction to entertain the Complaint u/s 28 of MRTU & PULP Act, 1971. The course open was to approach the Tribunal under Industrial Disputes Act to establish the relationship. The order passed by industrial Court is quashed and set aside by allowing both the writ petitions. However, with liberty to the petitioners to approach the appropriate forum under the Industrial Disputes Act to raise their grievance. Against this judgment the complainant union preferred two Letters Patent Appeals.

8. On behalf of the appellants, learned advocate Shri V.B. Patil advanced submission that respondents 1 and 2 is one entity. The oral and documentary evidence led before industrial Court establishes this fact. The respondents have not led evidence in support of their contention that they are two distinct units. Drawing an adverse inference against the respondents and on the basis of evidence led by the appellants, the industrial Court was justified in recording a finding that respondents 1 and 2 is one entity and there is no dispute about relations of employer and employee. The complaint u/s 28 of MRTU & PULP Act was perfectly maintainable and the learned single Judge was not justified to quash and set aside the order passed in favour of the appellant. In support of this submission, he has placed reliance on the decision of Apex Court in the case of Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers"

Union and Its Workmen, .

9. Learned Counsel Shri Prabhakaran while supporting the judgment of learned single Judge submitted that as pleaded by respondents 1 and 2 and admitted by appellant's witness, respondent No. 2 is a trust established under Bombay Public Trust Act and respondent No. 1 is a partnership firm registered under Indian Partnership Act. As such Respondents 1 and 2 are two separate and distinct entities. Industrial Tribunal did not take this aspect into consideration while recording finding that respondents 1 and 2 is one establishment. There is a dispute about relationship as employer and employee. The trust and partnership cannot be treated to be a branch of each other. Appellant union is not connected with the industry. The relationship as employer and employee being in dispute, complaint u/s 28 of MRTU and PULP Act is not maintainable. In support of this contention, he has placed reliance on the following judgments:

- 1) Vividh Kamgar Sabha Vs. Kalyani Steels Ltd. and Another, .
- 2) Indian Seamless Metal Tubes Ltd. (Tubes Division) Ahmednagar v. Sunil Rambhau Iwale and Ors. 2002 IV LLJ 1220
- 3) Hindustan Coca Cola Bottling S/W Pvt. Ltd. v. Bhartiya Kamgar Sena and Ors. 2002 I LLJ 380
- 4) Sarva Shramik Sangh Vs. Indian Smelting and Refining Co. Ltd. and Others, .
- 5) Cipla Ltd. Vs. Maharashtra General Kamgar Union and Others, .
- 6) Indian Express Newspapers (Bom) Employees Union v. KM. Desai and Ors. 1991 I LLJ 70.

10. He has also made submission that the complaint by union unconnected with establishment of industry is not maintainable. In support of this contention, he has placed reliance on the decision of this Court in the case of Rehman (F) v. Babson and Co. 1995 (I) CLR 600. In spite of challenge that complaint by union is not maintainable, the union has not placed on record the constitution of union to prove its connection with the respondent industry nor they have placed any material on record to show that the wages received by workmen are less than the wages recommended by Bacchawat Commission as per classification in the said award.

11. In view of the rival contentions advanced, in our opinion, four points arise in the present appeals for our consideration which are as under:

- (A) Whether the appellant union can be said to be a union having connection with the respondent industry?
- (B) Whether there is dispute about relationship as employer and employee?
- (C) Whether industrial Court was having (jurisdiction to entertain and record finding on the issue of relationship while entertaining the complaint u/s 28 of MRTU & PULP Act?

(D) Whether the Letters Patent Appeals are maintainable?

12. The learned single Judge was pleased to allow both the writ petitions and set aside the order of the industrial Court on the ground that there exists a dispute about relationship of employer and employee. Hence it was not within the jurisdiction of industrial Court under MRTU and PULP Act to enquire into the question as to whether the members of complainant union were employees of the said trust or not. The appropriate remedy was to file a proceeding under the Industrial Disputes Act. It has been specifically observed by the learned single Judge that the Writ Petitions are allowed only on the issue of jurisdiction and there is liberty to the employees to raise their grievance before the appropriate forum. This finding being challenged on behalf of the appellants, it has to be seen as to whether there exists a dispute about the relationship and thereafter the next question for consideration is as to whether industrial Court was having jurisdiction to investigate and record finding on that issue while dealing with a complaint u/s 28 of MRTU & PULP Act. To find out as to whether there was a dispute or not, pleadings of the parties need to be perused. A copy of the complaint filed before the industrial Court is on record at page Nos. 17 to 21 of the paper book. It has been pleaded that the workers enlisted in the Schedule are the members of the union. As regards the relationship with the respondents, it has been pleaded in paragraph No. B of the complaint that daily news paper Janashakti is owned by trust respondent No. 2. Printing work of the said paper was being carried out by respondent No. 1. It has been pleaded that the work of the said paper was being carried out through members of the union and the payment/salary/wages were paid by respondent No. 2. As regards status of respondent No. 1 pleading is specific that respondent No. 1 is one of the branches of respondent No. 2. By this pleading complainant union alleged that workers are the employees of respondent No. 2. Respondent No. 2 filed its written statement before industrial Court. In paragraph No. 4 of the written statement of respondent No. 2 there is specific and clear denial of the relationship. It has been denied that the workers enlisted in the Schedule were employed at any time by respondent No. 2 or the union made any charter of demand to respondent No. 2. It has also been specifically contended that respondent No. 2 is having no employer employee relationship with the workers for which the complaint has been made. So respondent No. 2 specifically denied the relationship of employer and employee. The union who lodged complaint nowhere pleaded that the members of the union were employed by respondent No. 1. So from this pleading it is established that there exists a dispute about the relationship as employer and employee.

13. On behalf of the appellant, Adv. Shri Patil advanced submission that industrial Court after considering the evidence, recorded a finding that respondent No. 1 is a branch of respondent No. 2 and also recorded finding that, relationship as employer employee is established. He tried to place reliance, in support of his contention on the decision of Apex Court in the case of Management of Pratap Press, New Delhi referred supra. The Apex Court in the

said case held that where an entrepreneur is engaged in several activities, each of which comes within the definition "industry", no hard and fast rule can be laid down for decision of the question whether they form part of one single industry for the calculation of the surplus profits for distribution of bonus to workmen in one of the units. Each case has to be decided on its own peculiar facts. It has also been held that most important test is that of functional integrality meaning thereby such of finance, employment and labour. The Court has to consider how far there is "functional integrality" meaning thereby such functional interdependence that one unit cannot exist conveniently and reasonably without the other and on the further question whether in matter of finance and employment the employer has actually kept the two units distinct or integrated. The ratio in this case is not any way helpful to the appellants at all. The said ratio will be relevant when the competent Court/forum will decide the issue as to whether the relations as employer-employee is established. In the present case, the jurisdiction of industrial Court to investigate or record finding on the issue of relationship itself is held to be a finding without jurisdiction on the ground that while entertaining complaint u/s 28 of the MRTU & PULP Act, the Court is having no jurisdiction to decide that issue. In view of the facts referred to above, it is established that there is a dispute about relationship of employer and employee.

14. The next point for our consideration is as to whether the industrial Court was having jurisdiction to investigate and record finding on the issue of relationship. On behalf of respondents, learned Adv. Shri Prabhakaran submitted that the industrial Court was having no jurisdiction to entertain that dispute while deciding the complaint u/s 28 of MRTU & PULP Act. Learned single Judge also recorded finding that the finding of the industrial Court on the issue of relationship is a finding without jurisdiction. Correctness of the said finding being challenged, it has to be seen as to whether the industrial Court had jurisdiction to decide that issue. On the issue of jurisdiction, learned single Judge placed reliance on the decision of Apex Court in the case of Cipla Ltd. (supra). In the case before the Hon'ble Apex Court, complaint was a complaint of unfair labour practice and the union had filed complaint u/s 28 of the Act alleging unfair labour practice in respect of workmen listed in Exhibit A to the complaint. The union had made allegations that these workers were engaged by appellant company as sweepers. The show is made that they are contract labours employed by respondent No. 2 and the services of these workers could be terminated on expiry of 11 months. Appellant company denied those allegations and also the fact that said workmen were engaged by appellant or that there was any relationship of employer and employee between them. The labour Court had dismissed the complaint. The industrial Court in revision confirmed the judgment of labour Court. However, in the writ petition, Division Bench of the High Court reversed the finding of both the Courts after recording a finding that workmen are employees of appellant company. Said decision of the High Court was challenged before the Apex Court. The Hon'ble Apex Court held that the appellant has disputed the relationship of employer and employee between

appellant and workmen listed in: Exhibit "A" and as such question of unfair labour practice cannot be enquired into at all. It has been specifically held "unless it is undisputed or undisputable that there is employer and employee relationship between the parties the question of unfair labour practice cannot be enquired into at all."

15. In the case of Maharashtra Engineering Plastic and General Kamgar Union, another Division Bench of this Court, held that in a complaint of unfair labour practice filed u/s 28 of MRTU & PULP Act, in view of the decision of Apex Court in the cases of Vividh Kamgar Sabha v. KalyaniSteels Ltd. and Anr. (supra) and Cipla Ltd. v. Maharashtra General Kamgar Union and Ors. (supra), the issue of relationship of employer and workmen cannot be investigated. In the case of Indian Seamless Metal Tubes also in another writ petition, single Judge of this, Court held that where the status of employer and employee relationship is disputed the complaint of unfair labour practice is not maintainable and industrial Court has no jurisdiction to entertain the same. It has been observed by the learned single Judge that in such cases, parties are not left without remedy but they can seek the remedy under the Industrial Disputes Act on the issue of existence of employer and employee relationship. In the case of Hindustan Coca Cola Ltd. supra, this Court held that complaint filed by Union and the employees are not maintainable as employer employee relationship is disputed and the industrial Court has therefore, no jurisdiction to try these complaints. In the case of Vividh Kamgar Sabha (supra) Hon''ble Apex Court held that if there is a dispute as to whether the employees are the employees of a company, then that dispute must first be got resolved by raising a dispute before the appropriate forum. It is only after relations as workmen is established before an appropriate forum, then complaint can be made under the provisions of MRTU & PULP Act.

16. In the case of Sarva Shramik Sangh supra, request appears to have been made to reconsider the question once again by a larger bench. However, the Apex Court held that decision in Cipla's case was taken not only in tune with earlier decisions but quite in accordance with the subject of the enactment and the object which the legislature had in view and the purpose sought to be achieved by Maharashtra Act and consequently there is no scope or necessity to reconsider the question once again by a larger Bench.

17. In view of the decisions referred to above, as held by the Hon''ble Apex Court, when the relationship as employer and employee are disputed the industrial Court while entertaining the complaint u/s 28 of MRTU & PULP Act, had no jurisdiction to decide that issue. As stated above, in the present case, respondent No. 2 denied the relations of employer and employee, so industrial Court was having no jurisdiction to record a finding on that issue. So whatever may be the evidence adduced before industrial Court on the point of establishing relationship that evidence cannot be looked into as that Court had no jurisdiction at all and the finding on that issue being without jurisdiction needs to be quashed and set aside. The learned single Judge has rightly held that the finding recorded

by the industrial Court is without jurisdiction and is liable to be set aside.

18. The judgment of learned single Judge allowing both the writ petitions and setting aside order of industrial Court is perfectly justified in view of law laid down by Hon''ble Apex Court in the cases referred to above, hence the same calls for no interference.

19. On behalf of the respondents, while challenging the maintainability of complaint by the union, contention has been raised that unless the union is connected with the industry, the union cannot file the complaint on behalf of the workers. Complaint u/s 28 of MRTU & PULP Act for unfair labour practice can be filed by union or by any employee. The learned single judge in his judgment did not consider this aspect but made it clear that only on the point of jurisdiction, the writ petitions are allowed. The respondents now contended that respondent No. 1 is a partnership firm and respondent No. 2 is a trust and as such they are distinct and separate entities. On the other hand, appellant union come with a case that it is a one entity. So there is a dispute as to whether respondents 1 and 2 constitute one establishment or whether they are distinct and separate entities. There is also a dispute as to whether the members of alleged complainant union are the workers engaged by respondent No. 1 or by 2. As discussed above in a complaint u/s 28 of MRTU & PULP Act, this question cannot be decided and the forum is the authority under the industrial Disputes Act. In view of these facts, it will not be proper to make any observations or record any findings on this issue as it may affect either of the parties, in case the union approaches Tribunal under Industrial Disputes Act to establish the said relations. In view of these facts, we abstain from recording any finding on this issue.

20. On behalf of the respondents, maintainability of the Letters Patent Appeals is challenged contending that the learned single Judge has exercised supervisory jurisdiction under Article 227 of the Constitution of India. Hence Letters Patent Appeals against said decision are not maintainable. On the other hand, on behalf of appellants submission is advanced that the appellants had filed writ petition under Articles 226 and 227 of the Indian Constitution and invoked the jurisdiction of the learned single Judge under both the Articles. So L.P.As. are perfectly maintainable. On perusal of the record of writ petitions, it is clear that the appellant union preferred writ petitions under Articles 226 and 227 of Constitution of India. On behalf of respondents in support of their contentions, reliance is sought to be placed on the decision of Full Bench of this Court in the case of State of Maharashtra v. Kusum Wd/o Charudatta and Ors. 1981 M.L.J. 93 and submission is advanced that the Tribunal is not impleaded as a party. For claiming a relief under Article 226 the Tribunal to which a writ is to be issued is a necessary party and it is not so in the case of a proceeding under Article 227 of Indian Constitution. The Full Bench held that when the petition is filed under Articles 226 & 227 petition has to be treated as one under Article 226. In the case of Jagdish Balwantrao Abhyankar v. State of Maharashtra 1993 MLJ 958 it has been held that where a party filed petition under Articles 226 and 227, Court

had to treat such a petition as one filed under Article 226 and against such a decision of single Judge appeal under Clause 15 of the Letters Patent is maintainable. In view of this ratio, the present L.P.As. are maintainable as the writ petitions have been filed by these appellants under Articles 226 and 227.

21. In view of above discussion we conclude that as the dispute about relationship of employer and employee existed, industrial Court was having no jurisdiction to decide that dispute in a complaint filed u/s 28 of MRTU & PULP Act. The learned single Judge allowed the writ petitions as the findings recorded by the industrial Court were found to be without jurisdiction. In the said findings recorded by the learned single Judge there are no infirmities. Hence no interference is warranted in the findings but these appeals preferred by the appellant-union deserve to be dismissed.

22. Letters Patent Appeals preferred by appellants against the judgment of single Judge dated March 6, 2007 passed in W.P. Nos. 854/2003 and 925/2003 are dismissed.