

(2014) 12 BOM CK 0047

In the Bombay High Court

Case No : Writ Petition No. 8991 of 2014

The Managing Director

APPELLANT

Vs

Swarajya Kamgar Sanghatana

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 30, 30(2), 32, 7

Citation : (2015) 2 ABR 76 : (2015) 5 ALLMR 331 : (2015) 5 BomCR 750 : (2015) LabIC 1475

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : T.K. Prabhakaran, Advocate for the Appellant; P.V. Barde, Advocate for the Respondent

Judgement

R.V. Ghuge, J.—Issue raised in this petition is as regards whether a complaint filed by contract labourers or through their Union could be maintained under the MRTU and PULP Act, 1971, after the Industrial Court has arrived at a prima facie conclusion that the workmen concerned are contract labourers and have been deployed by labour contractors on the establishment of the principal employer. I have, therefore, heard the learned Advocates for the petitioner/ management and the respondent/ Union at length.

2. The first respondent herein filed complaint (ULP) No. 15 of 2014 before the Industrial Court at Ahmednagar seeking status and benefits of permanency for the 71 workers mentioned in Annexure A to the complaint. Item Nos. 1 (a-b), 2 (a), 4 (c, e) of Schedule II and items 5, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971 were invoked.

3. It was alleged in the complaint that the petitioners prepared false and fabricated documents in order to project the workmen as contract labourers. The 71 workers mentioned in Annexure A have been working for about 7 to 9 years continuously. They are deliberately shown to be deployed by labour contractors.

It is informed that the said complaint was amended by the Union and respondent No. 2 & 3 labour contractors were added as respondents by order dated 30-06-2014.

4. After instituting the complaint on 17-02-2014, the Industrial Court passed an ex parte ad-interim order on 18-02-2014, operative part of which reads as under :-

ORDER

1. The respondents are directed not to terminate the services of the employees whose names are appearing in Annexure-A to the complaint without following due process of law till filing of the Stay with a notice to the respondents to show cause as to why such order should not be confirmed r/o 04-03-2014.

5. The petitioners filed their written statement on 04-03-2014, wherein preliminary objections as regards the complaint being untenable before the Industrial Court were raised. Though the issue of lack of jurisdiction was taken up contending that the complaint cannot be maintained under the MRTU & PULP Act, 1971, the Industrial Court proceeded to hear the application for interim relief.

6. The interim order passed by the Industrial Court dated 16-08-2014 has been impugned in this petition. It is noteworthy that respondent Nos. 2 & 3 labour contractors have been arrayed as respondents in the said complaint by the first respondent union. Grievance was that the said two contractors are a camouflage, are bogus and are shrewdly introduced by a paper arrangement in order to frustrate the rights of the workers and thereby render their complaint untenable in law.

7. The Industrial Court heard the litigating parties and delivered the impugned order issuing certain directions. The operative part of the order below paragraph No. 15 reads thus :-

ORDER

1. Application Exh. U-2 for interim relief is partly allowed.

2. Ex parte ad interim relief granted on 18-02-2014 is hereby confirmed.

3. Complaint shall proceed expeditiously on merits.

8. In the light of the above, on the one hand, when a jurisdictional issue is raised by the petitioner employer, the Industrial Court has considered the application for interim relief. On the other hand, before deciding the issue of its jurisdiction, it has allowed the interim application partly. The ex parte ad-interim relief granted on 18-02-2014 was confirmed.

9. Since a host of facts have been narrated and canvassed by the litigating parties, I have considered them in view of the law applicable and in view of certain conclusions drawn by the Industrial Court in the impugned order.

10. In paragraph No. 12 of the impugned order, the Industrial Court concludes that the employees in Annexure-A, who are said to be 71 in number, were working in different capacities as contract labourers with the petitioner-Company and had been deployed through respondent Nos. 2 & 3 labour contractors.

11. The Industrial Court has also concluded that there were agreements signed between the petitioner and the contractors on the basis of which the contractors have also obtained a licence to deploy contract labourers in the petitioner's establishment under the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA Act in short).

12. It would be of assistance and for clarity, that paragraph Nos. 12 and 13 of the impugned order dated 16-08-2014 are reproduced herein below :-

12. From the record, it appears that the employees in Annexure-A are working in different capacities as contract labourers in respondent Company deployed through M/s. Vaishnavimata Contractors and M/s. Balaji Contractors who have signed agreements with each contractor and obtained license under the Contract Labour (Regulation and Abolition) Act, 1970. At this juncture, it is very difficult to assume whether there exists employer and employees relationship between the employees and respondent Company as respondent Company is neither appointing nor terminating authority for any employee in skilled, semi skilled categories. The respondent Nos. 3, 4 and 5 allege that all employees are working with them and are paid wages. The Union alleges that only to deprive the permanency and benefits of permanency, the respondent alleges that they have been engaged through contractors. But the contractors are for name sake and bogus and only on paper. They are really employees of respondent No. 1 Company. As they have joined the union and raised grievances regarding permanency, they have apprehension of terminating their services without following due process of law.

13. One thing is clear from the record that the employees in Annexure-A are working since long period in respondent Company and there appears some substance in the grievance that as they have raised grievance regarding their permanency through union, they have apprehension that their services would be terminated high handedly without following due process of law. In fact their services are required to respondent- Company, whether it may be in whatever manner. Therefore, at this juncture, their services have to be protected from being terminated by respondent by granting interim relief. Whether they deserve for permanency and permanency benefits against respondent Company can be established only on the basis of oral and documentary evidence. In the facts and circumstances, the interim relief in limited nature can be granted. As the grievance is regarding permanency, complaint is required to be finally heard and disposed expeditiously.

13. The issue as to whether a (ULP) complaint claiming employer-employee relationship qua the principal employer and alleging that the contractor is a

camouflage, would render the complaint untenable before the Labour Court or Industrial Court, was considered by the Apex Court in the case of Vividh Kamgar Sabha Vs. Kalyani Steels Ltd. and Another, . This was followed by another judgment of the Apex Court in the case of Cipla Ltd. Vs. Maharashtra General Kamgar Union and Others, .

14. Paragraph No. 5 in the Vividh Kamgar Sabha's judgment (supra) reads as under :-

"5. The provisions of MRTU & PULP 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 as a workmen is established in an appropriate Forum that a complaint could be made under the provisions of MRTU & PULP Act."

15. Paragraph Nos. 8 & 9 of the Cipla Ltd. judgment (supra) read as under :-

"8. But one thing is clear - if the employees are working under a the Contract Labour (Regulation & 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 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.

9. Shri K.K. Singhvi, the learned senior Advocate appearing for the respondent, submitted that under Section 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 workmen 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 cases 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 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 under Section 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 v. Ahmedabad Mfg. & Calico Printing Co. Ltd. & Ors.* (supra), which view was reiterated by us in *Vividh Kamgar Sabha Vs. Kalyani Steels Ltd. and Another*, ."

16. It was thus laid down that a complaint (ULP) would not be maintained before the Labour Court or Industrial Court under the MRTU & PULP Act, 1971 which seeks to establish a direct relationship with the principal employer. The conclusions of the *Cipla Ltd.* judgment (supra) clearly indicate that any allegation of a sham and bogus contract with the contractor or a contractor being a camouflage to cover up an ostensible relationship with the principal employer, cannot be gone into by these Courts under the ULP Act.

17. The Five Judges Bench of the Apex Court in the case of *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*, , further clarified the position that even abolition of contract labour system shall not lead to an automatic absorption of contract labour by the principal employer. It was concluded that the contractor on such abolition or termination of contract shall follow the law of retrenchment as enshrined under the Industrial Disputes Act, 1947 and shall retrench the workman. Nevertheless, the option of absorption of such contract labourers was left with the principal employer.

18. This Court in the case of *Indian Seamless Metal Tubes Limited Vs. Sunil Rambhau Iwale and Others*, has rendered further clarity. This Court has dealt with the issue of disputed relationship or disputable relationship between the contract labourers and the principal employer. In the said case, the Industrial Court, Ahmednagar had assumed employer-employee relationship at a prima facie stage and had proceeded to grant certain reliefs to the contract labourers against the principal employer.

19. In the said case, the issue as to whether the contract labourers established such relationship was kept open to be adjudicated upon later. Dealing with the said situation, this Court has arrived at certain conclusions which are of assistance while dealing with this case. The conclusions in paragraph Nos. 21, 22

and 23 of the Indian Seamless judgment (supra) are reproduced here-in-below :-

21. Reverting to the facts of the case in hands, undisputedly the relationship of employer-employee between the parties has been denied and disputed. The records, prima facie, disclose that the respondents Nos. 1 to 12 were employed by the respondent No. 13 and were paid their wages by the respondent No. 13. There was an agreement executed between the petitioner and the respondent No. 13 for carrying out work regarding cleaning and conservancy in petitioner-factory premises. There was a legal and valid registration with the petitioner and legal and valid licence with the respondent No. 13 under the Contract Labour (Regulation and Abolition) Act, 1970. The agreement between the petitioner and the respondent No. 13 was to expire on 31-10-1999 and notice to that effect was issued by the petitioner to the respondent No. 13 on 31st August, 1999. As rightly submitted by the learned Advocate for the petitioner, these facts, prima facie, disclose that not only the employer employee relationship between the parties was disputed and denied by the petitioner, there was nothing on record to show that the petitioner had, at any time, accepted the respondents Nos. 1 to 12 as their employees. It is the case of the respondents Nos. 1 to 12 complainants themselves that they were shown as the contract labour. In the circumstances, to assume the existence of employer-employee relationship between the parties in the absence of any material in that regard and to arrive at such conclusion on assumption of the jurisdiction to decide the issue relating to unfair labour practice is an error of jurisdictional fact. As rightly submitted by the learned Advocate for the petitioner, the Industrial Court, by assuming the existence of employer-employee relationship between the parties, inspite of it having no jurisdiction to decide the said issue, has thereby illegally assumed jurisdiction in respect of the subject-matter, which the said Act has not conferred on it and thereby, by deciding wrongly the fact of existence of such relationship on which depends the jurisdiction of the Industrial Court to deal with the matter, has allowed the application for interim relief, rendering the order to be ultra vires and bad in law.

22. In the circumstances, therefore, the impugned order cannot be sustained and is liable to be quashed and set aside as far as it relates to the petitioner. The petition, therefore, succeeds. The impugned order, as far as it relates to the petitioner, is hereby quashed and set aside. The complaint (U.L.P.) No. 250/1999 pending before the Industrial Court, Ahmednagar, as far as it relates to the petitioner, stands dismissed. It is however, made clear that this will not preclude the respondents Nos. 1 to 12, if they so desire, from raising the dispute regarding their status in an appropriate forum in accordance with the provisions of law applicable to them and if so raised and in case it is decided in favour of the said respondents, then to approach the Industrial Court under the said Act. The petition as far as it relates to the respondent No. 13, the same is hereby dismissed. Rule is made absolute accordingly with no orders as to costs.

23. Registry to furnish a copy of this judgment to the Secretary, (Labour),

Government of Maharashtra, Bombay with a direction to circulate forthwith the copies of the same to the Industrial Courts and Labour Courts constituted under the said Act in the State of Maharashtra.

20. Shri Barde, learned Advocate for the Union has strenuously contended that the petitioners, merely to oust the jurisdiction of the Industrial Court have raised a dispute as regards employer employee relationship. The said dispute is aimed at self-serving purposes. The employer could not have raised the issue as there was no such dispute between the parties and, therefore, the same needs to be disregarded in the light of the Judgment of this Court in the case of Janprabha Offset Works Vs. Savra Shramik Sangh and Dainik Janshakti, .

21. In the Janprabha judgment (supra), the Single Judge while considering the law laid down in various judgments, arrived at a conclusion that the Court can scrutinise as to whether the employer has merely raised such a dispute in order to oust the jurisdiction of the Industrial Court. In deciding the said issue, this Court concluded that documentary evidence in the form of muster cum wage register, cash register, bonus register etc. could be considered by the Court so as to defeat a frivolous and vexatious contention as regards non existence of employer- employee relationship.

22. The above said judgment would not be applicable to this case for two reasons. Firstly, that in the instant case, the Industrial Court has arrived at a conclusion that the 71 contract labourers were deployed by the contractors and were ostensibly working through such contractors on the basis of signed contracts between the principal employer and the said contractors. Secondly, the judgment of this Court in Indian Seamless (supra) was not cited before the Single Judge so as to be able to consider the ratio so laid down while deciding the Janprabha case.

23. Shri Barde, has relied upon an unreported judgment of this Court delivered on 18-07-2009 in Writ Petition No. 2889 of 2003 in the matter of Raju Vishwanath Gaikwad & others Vs. Indian Seamless and Metal Tubes Ltd. & another. This Court while considering the contentions of the litigating parties has observed in paragraph 10 of the order that merely because there is a denial of relationship, it was not appropriate to oust the jurisdiction of the Court. The Industrial Court should not have inferred that there is an ouster of jurisdiction merely because such relationship is denied by the Company. The Industrial Court should have tried the jurisdictional issue along with other issues as it is a mixed question of facts and law.

24. It, therefore, appears to me that the learned Single Judge of this Court desired that the jurisdictional issue be decided along with the main issue while deciding the complaint. In the light of the law laid down in the Kalyani Steels, Cipla and Indian Seamless case (supra), the judgment of this Court in the Raju Vishwanath Gaikwad's case (supra) would not be applicable.

25. Learned Advocate for the petitioners has vehemently contended that the

Industrial Court should have considered the effect of the conclusions of this Court in the case of Indian Seamless (supra) along with the law laid down in the case of Kalyani Steel (supra) and in the case of Cipla Limited (supra) He contends that besides a mere mention of the citations in paragraph 14 of the impugned order, the Industrial Court has allowed the interim application in a casual manner, without considering the ratio laid down in the judgments cited.

26. He points out paragraph No. 23 of the Indian Seamless judgment (reproduced here-in-above) to contend that the said judgment was brought to the specific attention of each Labour Court and Industrial Court in Maharashtra. The conclusions drawn by this Court in the Indian Seamless case (supra) spell out the limitations therefore imposed on the jurisdiction of the Labour and Industrial Courts in dealing with the complaints of the said nature under the ULP Act.

27. I can gather from paragraph 23 of the Indian Seamless case (supra) that the Labour and Industrial Courts in Maharashtra, under the ULP Act, need to observe a certain degree of restraint while dealing with such cases in view of the settled law over the past about thirteen years.

28. Granting interim relief without deciding whether the Court has jurisdiction to deal with the complaint, has, time and again been deprecated by the Apex Court as well as by this Court. In the case of Dalal Engineering Pvt. Ltd. Vs. Ramrao Bhaurao Sawant and others, , this Court (Coram : B.N. Shrikrishna-J., as he was then) has observed that granting interim relief without deciding the jurisdictional issue is like shooting first and asking questions later, which may be the practice in the wild west, but hardly so in the Courts of law.

29. Paragraph 11 and 14 of the Dalal Engineering Pvt. Ltd."s case (supra) are as under :-

"11. However wide the sweep of the jurisdiction of the Court to prevent unfair labour practices under the Act, however deep and pervasive the doctrine of social justice, the Labour Court and the Industrial Court are both creatures of statute, and have only so much jurisdiction as is conferred upon them thereunder. They cannot assume or usurp jurisdiction which does not directly flow from the statute under which they function. In the instant case, the jurisdiction to entertain the complaint and grant reliefs therein, interim or final, is conferred on the Labour Court by Section 30 of the Act. Sub-section (1) of the said section deals with final relief and sub-section (2) with that of interim relief. By the judgments of this Court in Premier Automobiles Ltd. Vs. Engineering Mazdoor Sabha and others, , and Kirloskar Oil Engines Ltd. Vs. V.B. Dharurkar and others, , the limits of the jurisdiction to issue an interim order under Section 30(2) of the Act, have been surveyed and delineated by this Court. The two judgments have, in unmistakable terms, laid down that the jurisdiction to issue an order comes into existence only upon a finding that there is an unfair labour practice. If it is a final order, there must be a final finding, and, if it is an interim order, there must

atleast be a prima facie finding of unfair labour practice. This is the bare desideratum without which the Court can issue no order under Section 30. Recourse to the doctrine of social justice of Part III of the Constitution may not be necessary for this purpose. Apart from the jurisdictional limits indicated in these two judgments, the Labour Court must also realise that the general principles of law are still applicable to trials before it. unless the contrary is indicated by statute. One general principle of law is that an interim order is intended to ensure that the proceeding which is pending before the Court arising out of specific cause of action does not become frustrated by any act of a party, pending the hearing of the proceeding. This is really the reason d'être for an interim order, be it under any statute. At the invitation of Mr. Ganguli, I have anxiously perused the provisions of sub-section (2) of Section 30 and I find nothing therein, which makes a radical departure from the aforesaid established general principle of law and the law laid down by the two judgments of our High Court in *The Premier Automobiles* (supra) and *Kirloskar Oil Engines Ltd.* (supra) The only departure, if any, discernible is that the Labour Court has been given power to pass even a mandatory order of withdrawing temporarily the practice complained of which is an issue in the proceeding, which though available to a Civil Court, is exercised, only in extremely rare cases.

14. Before concluding this judgment, I must refer to another aspect of the matter, to which my attention was drawn by Mr. Singh. That it is the practice of the Court exercising jurisdiction under the Act of passing, lightly, ex parte orders with serious consequences. Section 30 of the Act, in term, does not empower either the Industrial or Labour Court to make any ex parte order. However, the provision appended to subsection (2) of Section 30 gives an indication that an interim order may, perhaps, be made even ex parte and that it may be reviewed on an application made by the aggrieved party. While I am not willing to accede to the argument that there is no power to grant an ex parte interim order, I have to point out that it is necessary to remember that an ex parte order should be the exception and not the rule, the Court should insist upon the party likely to be affected by the order being given notice, however short, If this is done as a matter of prudent practice, then the Court would be in a better position to appreciate the consequences of an ad interim order and decide whether an ad interim order needs to be made at all. It is possible that the party given notice might come before the Court, and ask for time to be able to show cause properly. Nothing prevents the Court from putting such party to terms and thereafter taking up the application for interim relief for hearing. Shooting first, and asking questions later, may be sound practice in the Wild West, but is hardly so in a Court of Law. The practice of issuing ad interim order, ex parte, as a rule, and then repeatedly postponing applications for vacating the order, is neither just, nor equitable. Instead of rendering justice, it causes serious prejudice, hardship and injustice to parties."

30. I find a similar situation in this case. The Industrial Court has come to a prima facie conclusion that there are two labour contractors having appropriate

licence under the CLRA Act and who had deployed 71 employees mentioned in Annexure-A to the complaint, in the petitioners establishment. The complaint was therefore rendered untenable. When such conclusions drawn by the Industrial Court are based on a prima facie appreciation of the record available before it, it had no jurisdiction to pass an order that the petitioner shall not terminate the services of such contract labourers, virtually thereby directing the petitioner to continue with the contracts with respondent Nos. 2 & 3 contractors.

31. It is noteworthy that respondent No. 1- Union as well as the respondent Nos. 2 & 3 contractors have not challenged the said conclusions drawn by the Industrial Court in paragraph 12 & 13 of the impugned order.

32. As such, in the light of the above and in view of the law laid down by the Apex Court in the judgments referred here-in-above, the impugned order deserves to be quashed and set aside. Since the industrial Court has come to a conclusion on the prima facie appreciation of the record that there is no employer employee relationship between the petitioner and the workers in Annexure A of the complaint represented by the first respondent, the said complaint (ULP) No. 15 of 2014 is rendered untenable.

33. However, since these conclusions are drawn under the MRTU and PULP Act, 1971 at a prima facie stage and since the complaint is being dismissed only on the basis of such conclusions, the 71 employees mentioned in Annexure A to the complaint as well as the first respondent-union shall not be precluded from raising an industrial dispute under the ID Act, 1947, before the appropriate forum in the light of the observations of the Apex Court in the case of Kalyani Steel and Cipla limited judgments (supra) and the Indian Seamless judgment (supra).

34. As such, they would be at liberty to raise an industrial dispute which may include the contention of the workers that the petitioner herein is the real employer of the said workers. Needless to state, this dispute if raised, shall also make respondent Nos. 2 & 3 answerable and they shall participate in the conciliation proceedings so initiated. The appropriate forum shall deal with all issues in accordance with law noting that this Court has neither opined as regards the merits of the rival contentions, nor the manner in which the concerned authority shall conciliate in the said dispute.

35. In the light of the above, this petition is allowed. The impugned order dated 16-08-2014 is quashed and set aside to the extent of granting relief to respondent No. 1 Union and the workers. Complaint (ULP) No. 15 of 2014 stands dismissed.

36. Needless to state, the observations made by this Court on the basis of the aspects emerging and the law applicable, shall not influence the appropriate forum while dealing with the industrial dispute, in the event the said workers/ Union raise the same.

37. The complaint is being dismissed only because, prima facie, the jurisdiction of the Industrial Court has been ousted in the light of the judgment of the Apex Court in the case of Kalyani Steels and Cipla judgments (supra) and the judgment of this Court in the 2001 case of Indian Seamless (supra).