

(2005) 06 BOM CK 0095

In the Bombay High Court

Case No : Writ Petition No. 1204 of 2003

Tukaram Tanaji Mandhare and Another

APPELLANT

Vs

Raymond Woollen Mills Ltd. and Others

RESPONDENT

Date of Decision : 06-06-2005

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 3(13), 3(14), 3(14), 3(14), 79, 79
Contract Labour (Regulation and Abolition) Act, 1970 — Section 30, 30, 90
Factories Act, 1948 — Section 46, 46
Maharashtra Factories Rules, 1963 — Rule 79, 79
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 28, 28, 3(5), 3(5)

Citation : (2005) 4 ALLMR 534 : (2005) 6 BomCR 145 : (2006) 108 FLR 411 :
(2006) 1 LLJ 920 : (2005) 4 MhLj 1045

Hon'ble Judges : S. Radhakrishnan, J;J.P. Devadhar, J;A.P. Shah, J

Bench : Full Bench

Advocate : Y.M. Pendse, for the Appellant; P.K. Rele and Meena H. Doshi, for the
Respondent

Judgement

A.P. Shah, J.

I. The facts of these cases are briefly as follows. The petitioners filed complaints u/s 28 read with items I(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 judgements 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 Supreme 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 judgements 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. Thereafter the petitioners filed the present writ petitions challenging the dismissal of the complaints. In the meantime by judgement in the case of Sarva Shramik Sangh Vs. Indian Smelting and Refining Co. Ltd. and Others, the Supreme Court has reiterated the view taken in Kalyani Steel Ltd and Cipla Ltd. The learned single Judge (Nishita Mhatre J.) before whom the writ petitions came up for hearing noted that all these cases decided by the Supreme Court were in respect of industries governed by the Industrial Disputes Act, 1947 whereas present petitions relate to 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 Ors. v. Chhatrapati Sahakari Sakhar Karkhana Ltd and Ors., 1996 II LLJ 169 and in Sakhar Kamgar Union v. Shri Chhatrapati Rajaram Sahakari Sakhar Karkhana Ltd and Ors., 1996 2 CLR 67 Srikrishna J., as he then was, has held that 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 the case of Nagraj Gowda and Ors. v. Tata Hydro Electric Power Supply Co Ltd., Bombay and Ors., 2003 3 CLR 358 has expressed a contrary view considering the judgements of the Supreme Court in Kalyani Steel Ltd, Cipla Ltd and Sarva Shramik Sangh as also the judgement of the Division Bench of this Court in the case of Hindustan Coca Cola Bottling Pvt. Ltd. v. Bharatiya Kamgar Sena, 2001 3 CLR 1025. The learned single Judge therefore decided to make a reference to a larger Bench in view of what is regarded as conflicting decisions of the learned single Judges of this Court.

2. The questions, which have been referred to the Full Bench, have been formulated as under:

1) Whether a person who is employed with 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 judgements of the Cipla (supra), Kalyani Steels Ltd (supra) and Sarva Shramik Sangh v. Indian Smelting and Refining Co Ltd. (supra)?

3. In order to appreciate these questions it is necessary to refer to relevant provisions of the MRTU and PULP Act and BIR Act. A complaint filed under the MRTU and PULP Act is maintainable at the instance of an employee. The term "employee" is defined in section 3(5) of the Act as under:

"3. In this Act, unless the context requires otherwise....

5) "employee" in relation to an industry to which the Bombay Act for the time being applies, means an employee as defined in clause (13) of section 3 of the Bombay Act; and in any other case, means a workman as defined in clause (s) of the section 2 of the Central Act".

4. The term "employer" is defined in relation to an industry to which Bombay Act applies to mean an employer as defined in clause (14) of section 3 of the Bombay Act. The expression "Bombay Act" is defined as "the Bombay Industrial Relations Act, 1946". Thus, any person so answering the definition of "employee" within the meaning of section 3(13) of the Bombay Industrial Relations Act is entitled to maintain a complaint under the MRTU and PULP Act.

5. Section 3(13) of the BIR Act reads as under:

"3) In this Act unless there is anything repugnant in the subjects or context....

13) "employee" means any person employed to do any skilled or unskilled work for hire, or reward in any industry, and includes

a) a person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of sub-clause (e) of clause (14):

b)...

i)...

ii)...

6. Section 3(14) reads as under:

"(14) "Employer" includes

a) ...

b) ...

c) ...

d) ...

e) where the owner of any undertaking in the course of or for the purpose of conducting the undertaking contracts with any person for the execution by or under the contractor of the whole or any part of work which is ordinarily part of the undertaking, the owner of the undertaking"

7. Now the BIR Act defines both employer and employee and the definition is an artificial definition. According to this definition although a person is employed by a contractor and the employment is not of the employer himself and no privity is established between the employer and the person employed, even so the person employed, becomes an employee if the contractor employs him in execution of a contract with the employer, that contract being one referred to in sub clause (e) of clause 14 of the BIR Act. Therefore we have to read sub clause (13)(a) with reference to sub clause 14(e) of the section. These two are co-related. The particular employee contemplated by the Legislature under subclause (13)(a) is related to the employer contemplated by sub clause (14)(e) in the same section. If the definition is satisfied, then even though according to common law the relationship between the contract labour and the company may not be that of master and servant, still they would be employer and employee within the meaning of section 3(13) of the BIR Act and were consequently "employees" within the meaning of section 3(5) of the MRTU and PULP Act and the complaint filed by such an employee u/s 28 of the said Act is perfectly maintainable.

8. There have been quite a few decisions of this Court and the Supreme Court on the subject of the relationship of employer and contractor's workmen under the BIR Act. In *The State of Bombay Vs. The Maharashtra Sugar Mills Ltd.*, the contract labour claimed that they were entitled to the same wages as was paid by the mill to its muster roll labour. The Industrial Court, decided in favour of the labour and the mill thereupon moved this Court by way of a writ of certiorari to quash the order. The Award of the Industrial Court was set aside, whereupon the contractor's workmen filed appeal which was allowed by the Division Bench of this Court. Chagla C.J speaking for the Bench observed:

" Therefore, reading the two sub sections together the position is that when there is the owner of an undertaking and that owner of the undertaking does not employ labour directly, but enters into a contract with a contractor, and the contractor supplies the necessary labour for the purpose of the undertaking of the owner, then the persons so employed or recruited or supplied by the contractor are as much as employees of the owner of the undertaking as if the owner had directly employed them. If I may put it in a different way, the Legislature has not chosen to make any distinction between a case where the owner of an undertaking employs labour and the ordinary relationship of master and servant is set up and the case where the owner interposes, as it were a contractor between himself and the labour which is used for the purpose of his industry. The interposition of the contractor makes no difference to the relationship between the persons employed and the employer. In the eye of the

law the relationship in both the cases is identical with the same rights and liabilities" .

This decision of the Division Bench was confirmed by a 3 judge Bench of the Supreme Court in Maharashtra Sugar Mills Ltd. v. The State of Bombay and Ors., 1951 II LLJ 299.

9. In Ahmedabad Manufacturing and Calico Ptg Co Pvt Ltd. v. Ram Tahel Ramnand, 1972 II LLJ 165 the respondents were working as gardeners or garden mazdoors and had been employed through contractor indirectly by the Mills. The Mills raised several pleas and the main plea was that the respondents were not their employees and they were not their employer and as such the respondents have no locus standi to make an application. The Labour Court dismissed the application holding that the respondents were contractor's employees and cannot invoke statutory definition of the employer under the BIR Act. On appeal the Industrial Court also held that the respondents cannot be held to be employees as defined under the BIR Act. The High Court of Gujarat approached by the respondents under Article 227 found it difficult to accept the reasoning of the Industrial Court and rejected the contention of the Mills that application of the Company must be restricted only to those workers who are directly engaged in the manufacture of the textile fabric. The High Court observed that the activity undertaken as a part of the undertaking and in the course of its conduct may be undertaken voluntarily or as a result of statutory duty or obligation, but what is necessary is that the activity must reasonably be attributable to the undertaking in its usual and ordinary course in conduct of the business of undertaking and if that is so then such an activity could be considered as an activity of the worker who would fall within section 3(13) of the BIR Act. In view, however, of the fact that the garden in which the respondents had been working was not situated within the premises of the Mills and the garden area included some others concerns and the respondents were employed by the contractors was not considered by the Industrial Court, the case was sent back to the Industrial Court . In appeal, upholding the conclusions of the High Court, the Supreme Court held that the problem has to be looked at from the consideration of social justice which has become an integral part of the industrial law. It must adopt realistic and pragmatic approach for resolving the controversy of capital and labour by weighing it on even scale with the consciousness that industrial operations in modern times have become complex and complicated and for the successful functioning of an industry various amenities for these working in it are deemed as essential for a peaceful and healthy atmosphere.

10. In the case of The Saraspur Mills Co. Ltd. Vs. Ramanlal Chimanlal and Others, the provisions of section 3(13) and (14) of the BIR Act again fell for consideration of the Supreme Court. In that case the company had entrusted the task of running the canteen to a coop society and it employed the respondents workmen in the canteen. The respondents filed an application before the labour court u/s 79 of the BIR Act that they were not paid wages and dearness

allowance in accordance with the Award of Industrial Court. The company refused to pay on the ground that they were not its employees. The claim of the respondents workmen was dismissed by the Labour Court. The respondents filed an appeal before the Industrial Court which was allowed and the company was directed to pay the arrears of wages and dearness allowance in accordance with the Award. The company preferred SLP to appeal from the decision of the Industrial Court. The Supreme Court, following the judgement in Ahmedabad Manufacturing and Calico Ptg Co Pvt Ltd (supra) and the judgement of the Constitution Bench in Basti Sugar Mills v. Ram Ujaygar and Ors., 1963 II LLJ 658 held that where there is a statutory liability on the company to run a canteen in the factory then even though the canteen was run by a coop society the employees working in the canteen would be covered by the definition of the word "employee" as defined in section 3(13) of the BIR Act.

11. In Basti Sugar Mills's case the Constitution Bench considered the provisions of section 2(i) of the UP Industrial Disputes Act, 1947 which contains an inclusive definition of employer. The Court held that the effect of sub clause (iv) of section 2(i) is that where the owner of any industry in the course of or for the purpose of conducting the industry contracts with any person for the execution by or under such person of the whole or any part of any work which is ordinarily a part of the industry, the owner of such industry is an employer within the meaning of the Act also for the workmen employed by such contractor. The obvious purpose of this extended definition of the word "employer" is to make the owner of an industry, in the circumstances mentioned in the sub-clause, the employer of the workman engaged in the work which is done through a contractor. The words used in sub clause are clearly sufficient to achieve this purpose. Hence the persons employed by a contractor to do the work of removal of press mud in a sugar factory would be the employees of the sugar factory by virtue of the definition of section 2(S) read with section 2(i)(iv) of the Act. 12. The issue whether a complaint filed by a contractor's employee of an industry governed by the BIR Act can be maintained as a complaint under the MRTU and PULP Act came up for consideration of Srikrishna J., as he then was, in the case of Sakhar Kamgar Union v. Shri Chhatrapati Rajaram Sahakari Sakhar Karkhana Ltd. (supra) In that case the petitioner union filed a complaint under the MRTU and PULP Act on behalf of the employees working in the sugar house, godown and delivery departments of the factory covered by the provisions of the BIR Act. It was alleged in the complaint that the concerned employees had been working since the crushing seasons of 1968-69; that the factory was getting the work done in the sugar house, godown and delivery department through contractors though the said work was very much the work of the undertaking itself; that by repeatedly changing the contractors and disrupting the services of the employees, the employees were deprived of their legitimate rights. It was claimed in the complaint that the concerned employees were entitled to be made permanent in service by the respondent who was deliberately depriving them of the benefits and status of permanency. The respondent contended that the complaint was not maintainable

since the employees on whose behalf the complaint was filed were not "employees" within the meaning of section 3(5) of the MRTU and PULP Act. The Court after noticing the provisions of section 3(5) of the MRTU and PULP Act and the provisions of section 3(13) and (14) of the BIR Act held as follows:

"A combined reading of these definitions suggests that in an undertaking covered by the BIR Act, if any work which is ordinarily part of the undertaking has been entrusted to a contractor for execution by or under him and, for executing such work, the contractor engages contract labour, then notwithstanding the fact that there is no relationship of employer and employee between the principal employer and the contractor's workmen, for the purposes of the BIR Act, such contractor's workmen are deemed to be employees within the meaning of Section 3(13) of the Act.

7. Section 3(5) of the Act defines "employee" in relation to an industry to which the Bombay Act applies, as an employee as defined in clause (13) of Section 3 of the BIR Act. The expression "Bombay Act" is defined in Section 3(1) of the Act to mean Bombay Industrial Relations Act, 1946. Thus, a person who falls within the definition of the expressions "employee" as defined in Section 3(13) of the BIR Act, would be an employee within the meaning of sub-section (5) of Section 3 of the Act and would be entitled to maintain a complaint under the provisions of the Act. "

The learned Judge also held that the provisions of section 30 of the Contract Labour (Regulation and Abolition) Act, 1970 cannot be read as overriding the provisions of BIR Act and observed:

"In my view, the provisions of Section 30 of the Contract Labour (Regulation and Abolition) Act, 1970, cannot be read as over-riding the benefits which were already conferred on the contract labour under a cognate statute like the BIR Act. The thrust of Section 30 is towards over-riding, "anything inconsistent therewith" contained in any other law. It is not possible to accept as correct the view of the Industrial Court that the benefit of direct employment conferred upon the contract labour by virtue of the conjoined effect of Sections 3(13) and 3(14) of the BIR Act was something "inconsistent" with any of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. It is not possible to read Section 30 of the Contract Labour (Regulation and Abolition) Act, 1970 as taking away better benefits already enjoyed by contract labour under the provisions of any law. It is unfortunate that the Industrial Court used Section 30 in a benevolent piece of legislation to bring about a result directly contrary to the intendment of the Parliament. It is not in dispute that the concerned workmen were employed on work which was part of the work of the undertaking of the sugar mill and that the work being executed by the contractor would fall within the description in Clause (d) of Section 3(14) of the Bombay Industrial Relations Act, 1946. Consequently, all such persons were entitled to the benefit of clause (a) of Section 3(14) of the Bombay Industrial Relations Act, 1946. Hence, they would deemed to be "employees" for the purposes of the Act."

The learned Judge reiterated the same view in *Sakhar Kamgar Union v. Shri Chhatrapati Rajaram Sahakari Sakhar Karkhana Ltd and Ors.* (supra).

13. The Supreme Court while deciding the case in *Shramik Uttarsh Sabha Vs. Raymond Woolen Mills Ltd. and others*, has held thus in para 13:

"13. The MRTU and PULP Act takes note of the provisions of the BIR Act. Many of its definitions are stated to be those contained on the BIR Act. Chapter III, which deals with the recognition of Unions, states, in section 10(2), that its provisions do not apply to undertakings in industries to which the provisions of the BIR Act apply. The BIR Act was enacted to provide for the regulation of the relation of employers and employees in certain matters and to consolidate and amend the law in relation to the settlement of industrial disputes. The MRTU and PULP Act was enacted to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings; to state their rights and obligations; to confer certain powers on unrecognised unions" and to define and provide for the prevention of unfair labour practices and to constitute courts in this behalf. It cannot, therefore, be said that the BIR Act and the MRTU and PULP Act operate in different fields. There is commonality in their objects and their provisions. The obvious intent of the legislature which enacted them was that they should operate in tandem and complement each other in respect of industries to which the BIR Act had been made applicable. The two statutes must be read together".

14. Therefore both the provisions of the BIR Act and MRTU and PULP Act complement each other in respect of industries to which the BIR Act has been made applicable in relation to the definition of employee contained in the BIR Act which has been incorporated in the MRTU and PULP Act in respect of the employees engaged in an industry governed by the provisions of the BIR Act. The term "employee" has been given an extended meaning by the BIR Act. An employee is not only a person who is employed by the employer or over whom the employer has control, but also certain type of persons having been constituted, if one might put it so, statutory employees under the Act. It is not that every person employed by a contractor becomes an employee of the master, but only those persons who are employed by the contractor to do work for him in the execution of contract with an employer, which is mentioned in sub-clause (e) of clause (14), which defines "employer" and it is inclusive definition. If these two conditions are satisfied then any person employed by a contractor becomes employee of the owner of the undertaking and the complaint by such an employee u/s 28 of the MRTU and PULP Act would be maintainable in law. However, if the complaint fails to disclose the jurisdictional fact that the "work being ordinarily part of the undertaking" in relation to the work which was entrusted to the workman of the contractor, the workman must first get established the employer-employee relationship by adopting appropriate proceedings before the appropriate forum under the BIR Act and it is only after status of the workman or employee is established in appropriate forum that a

complaint would lie under the provisions of the MRTU and PULP Act.

15. It is pertinent to note that the judgements of the Supreme Court in Kalyani Steel Ltd , Cipla Ltd and Sarva Shramik Sangh are in respect of industries governed by the Industrial Disputes Act which does not contain an extended definition of employee as contained in section 3(13) of the BIR Act. The Supreme Court has held that the provisions of the MRTU and PULP Act can only be enforced by persons who admittedly are workmen. If there is any dispute as to whether the employees are employees of the company then that dispute must be got resolved by raising a dispute before the appropriate forum. It is only after the status as workman or employee is established in an appropriate forum that a complaint could be made under the provisions of the MRTU and PULP Act. In other words the existence of relationship is condition precedent for filing a complaint under the MRTU and PULP Act. A person who does not answer the description of an employee has no locus standi to file the complaint. The common thread passing through all these judgements is that in order to entertain a complaint under the MRTU and PULP Act it has to be established that the complainant was an employee of the employer against whom the complaint is made. When there is no dispute about the relationship the provisions of MRTU and PULP Act would have full application. However, if the basic claim is disputed then the issue has to be adjudicated by the forum which is competent to adjudicate. Now so far as the industries governed by the BIR Act are concerned contractor's employees engaged for execution of the whole or part of the work of the undertaking are regarded as employees by the statute and, therefore, the question of establishing the status of such employees does not arise and the complaint filed by such employees will be clearly maintainable.

16. In Nagraj Gowda's case (supra) the question involved was whether the workers employed by the contractor in the canteen are employees of the company. Khandeparkar J. noted that there is nothing disclosed in the complaint which can reveal that the canteen, wherein the contract workers were employed, formed "ordinarily part of the undertaking" of the company. It was not the case of the contract workers that the factory of the company has either been specified by the State Government in terms of section 46 of the Factories Act, 1948 read with rule 79 of the Mah Factories Rules, 1963 nor any notification was placed on record in that behalf either before the Industrial Court or in the High Court .Therefore the learned Judge held that the question of holding the company to be statutorily liable to have a canteen for the use of the workers does not arise and in the absence of pleadings and material in support of basic facts which are necessary to disclose the statutory liability of the company to have a canteen for use of the workers in terms of section 46 of the Factories Act read with rule 79 of the Factories Rules it cannot be said that the company was legally bound to maintain a canteen for the benefit of its employees. The learned Judge held that the question whether the company was statutorily liable to maintain a canteen for its workers was disputed by the employer and, therefore it was necessary for the contract workers to get the issue of existence of

relationship of employer employee by approaching an appropriate forum under the relevant provisions of BIR Act before approaching the Industrial Court under the provisions of the MRTU and PULP Act and since admittedly there was no adjudication in relation to such an issue the complaint was not maintainable. The learned Judge has distinguished the judgement rendered by Srikrishna J in the case of Dattatraya Kashinath and ors (supra) and Sakhar Kamgar Union (supra) and observed in para 9 as follows:

"The ratio of the decision in Dattatraya Kashinath and Ors. v. Chhatrapati Sahakari Sakhar Karkhana Ltd., Pune and Ors. (supra) as well as in Sakhar Kamgar Union v. Shri Chhatrapati Rajaram Sahakari Sakhar Karkhana Ltd. and Anr. (supra) can be ascertained from the contents of para 9 and 6 of the respective decisions. In para 9 of the decision in Dattatraya Kashinath and ors it was held that a conjoint reading of section 3(13)(a) with section 3(14)(e) leads to a conclusion that, where an employer of an industry covered by the provisions of the BIR Act, in the course of or for the purpose of conducting the undertaking, contracts with any person for the execution by or of any work which ordinarily part of the undertaking, the owner of such undertaking would be the employer and the person employed by the contractor to do such work would be the employee. In Sakhar Kamgar Union's case, in para 6 thereof, it was held that a combined reading of these definitions suggests that in an undertaking covered by the BIR Act, if any work which is ordinarily part of the undertaking has been entrusted to a contractor for execution by or under him and, for executing such work, the contractor engages contract labour, then notwithstanding the fact that there is no relationship of employer and employee between the principal employer and the contractor's workmen, for the purpose of the BIR Act, such contractor's workmen are deemed to be employees within the meaning of section 3(13) of the Act. Both these decisions disclose that in order to establish the relationship of employer employee between the undertaking or the company and the contractor's workmen, what is absolutely necessary is that "any work which is ordinarily part of the undertaking" has to be entrusted by the contractor to his workmen for execution thereof. Though it is sought to be contended that the canteen is otherwise ordinarily a part of the undertaking of the respondent no.1, no factual foundation has been laid in that regard either in the complaint or in the evidence. Being so, the decisions in the cases of Dattatraya Kashinath and ors as well as in Sakhar Kamgar Union which are squarely on the basis of "the work being ordinarily part of the undertaking" in relation to the work which was entrusted to the workmen of the contractor, can be of no assistance to the petitioners to contend that in the facts and circumstances in which they were employed by the contractor for the canteen in question would lead to the conclusion that they are also the employees of the respondent no. 1 within the meaning of the provision of law contained in section 3(14) of the BIR Act. Being so, both the decisions are of no assistance to the petitioners in any manner in the matter in hand".

17. In our considered opinion there is no conflict between the decisions of

Srikrishna J. in the case of Dattatraya Kashinath and Sakhar Kamgar Union (supra) and the decision of Khandeparkar J. in Nagraj Gowda's case (supra). In the case before Khandeparkar J. there was a dispute as to whether contractor's workers were doing the work which was ordinarily part of the undertaking and, therefore the learned Judge held that the workers should get the dispute decided independently under the provisions of the BIR Act before approaching the Industrial Court under the MRTU and PULP Act. But where a person is employed with a contractor who undertakes contracts for execution of whole or part of the work which is ordinarily the work of the undertaking then such a person is an employer within the meaning of section 3(5) of the MRTU and PULP Act and entitled to maintain a complaint u/s 28 of the said Act. What reliefs could be granted on such complaint in the limited jurisdiction of the MRTU and PULP Act does not really arise in this case and we need not express any opinion about the same.

18. On behalf of the Company it has been argued before us that the decision of the Supreme Court in IPCL v. Shramik Sena (1999) II LLJ 696 would apply with equal force to this case as the Supreme Court has held that a person who falls within the definition of "worker" under the Factories Act would be a worker only for the purpose of that Act and not other Act. It is, therefore, submitted that logically it follows that the contractor's employee covered by section 3(13) should be regarded as employee for the purpose of BIR Act only and not for the purpose of MRTU and PULP Act. We are afraid that the submission is totally misconceived. In IPCL the question before the Supreme Court was that whether the workmen in the establishment where the canteen is maintained as a requirement of section 46 of the Factories Act ipso facto become regular workmen of the management. It was held that though the canteen run in the establishment of the management which has now come to be termed as a statutory canteen the workmen in the canteen become employees of the management only for the purpose of Factories Act. The Factories Act does not govern the rights of the employees with reference to recruitment, seniority, promotion, retiral benefits etc. Therefore the employees of a statutory canteen do not ipso facto become employees of the management for all purposes. This does not mean that a person who is employed under the BIR Act as he falls within the definition of section 3(13) of that Act would not necessarily be an employee under the MRTU and PULP Act when the MRTU and PULP Act itself stipulates that the employee under the MRTU and PULP Act is a person who is employee u/s 3(13) of the BIR Act. While defining the term "employee" under the MRTU and PULP Act the Legislature has incorporated the definition of "employee" contained in section 3(13) of the BIR Act. When an earlier Act or certain of its provisions are incorporated by reference into a later Act the provisions so incorporated become part and parcel of the later Act as if they had been "bodily transposed into it". The effect of incorporation is to quote the words of Lord Esher M.R "... is to write those sections into the new Act as if they had been actually written in it with the pen, or painted in it". The result is that the definition of employee incorporated in the MRTU and PULP Act has

become part and parcel of the said Act. As held in *Shramik Utkarsh Sabha v. Raymond Woollen Mills Ltd* (supra) the BIR Act and MRTU and PULP Act do not operate in different fields. There is commonality in their objects and their provisions. Therefore two statutes must be read together. Consequently the contractor's employee falling u/s 3(13) must be regarded as an employee for the purpose of MRTU and PULP Act in respect of an industry governed by the provisions of the BIR Act and complaint filed by such an employee is maintainable.

19. The position, therefore, is that a person who is employed through a contractor who undertakes contracts for execution of any of the whole of the work or any part of the work which is ordinarily work of the undertaking governed by BIR Act is an employee within the meaning of section 3(5) of the MRTU and PULP Act and a complaint of such an employee is maintainable though no direct relationship of employer employee exists between him and the principal employer. However, if there is a dispute as to whether the contract workers were doing the work which forms part of the undertaking then the workers will have to get the dispute decided independently under the provisions of the BIR Act before approaching the Industrial Court under the MRTU and PULP Act.

Our reply to the questions referred to Full Bench will, therefore, be in the affirmative to questions 1 and 2 and in the negative to question 3 provided the contractor's workman is employed to do the work of the whole or part of the undertaking. The matters now be placed before the learned single Judge for further orders.