

(2016) 01 BOM CK 0180
In the Bombay High Court
Case No : Writ Petition No. 657 of 2004

Uni Klinger Ltd.

APPELLANT

Vs

Subhash Baburao Kambale and Others

RESPONDENT

Date of Decision : 29-01-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 32, Section 33-C(2)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 28

Citation : (2016) 3 AIRBomR 31 : (2016) 3 CLR 241 : (2016) LIC 2142 : (2016)
6 MhLJ 543

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

Bench : Single Bench

Advocate : V.N. Upadhye, Learned Advocate, for the Appellant; P.L. Shahane,
Learned Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.V. Ghuge, J.—1. This petition was admitted by this Court by order dated 13.08.2004. Prior thereto, by an order dated 09.02.2004, ad-interim relief in terms of prayer clause (C) was granted, which was confirmed while admitting the petition. Prayer clause (C) reads as under:-

"Grant stay to the operation and execution of the impugned judgment and order dated 28/08/2003 passed by the Learned Member, Industrial Court, Ahmednagar in Complaint (ULP) Nos. 222, 223, 224 and 225 of 1991 marked at Exhibit "C" to the petition during the pendency of the petition."

2. The order dated 13.08.2004 reads as under:-

"Heard Shri V.N. Upadhye, learned counsel for the petitioner and Shri Pradeep Shahane, learned counsel for the respondent Nos. 1 to 4. Respondent No. 5, though served, absent.

Rule.

Interim stay in terms of clause (4) of the order dated 28/08/2003, impugned in this petition and status quo in respect of employment, as on today."

3. It is undisputed that except Respondent No. 1 in this petition, namely, Shri Subhash Baburao Kambale, the remaining three employees Babulal Shaikh, Madhav Tatyaji and Ashok Shinde are not in employment from 1999 during the pendency of the complaints.

4. The Petitioner/ Employer is aggrieved by the judgment of the Industrial Court dated 28.08.2003 delivered in Complaint (ULP) Nos. 222 of 1191 upto 225 of 1991 filed by Respondent Nos. 1 to 4 respectively. The said complaints were allowed and the Petitioner was directed to grant status and benefits of permanency to Respondent Nos. 1 to 4/ original Complainants from the date of filing of the complaints.

5. The Petitioner submits that there was no Employer-Employee relationship between the Petitioner and the Respondents/ Employees on the date they filed the complaints. Paragraph 3 of the complaints is pointed out to indicate that these four Employees were working from 1986 on the premises of the Petitioner, however, through the labour contractor.

6. Attention is drawn to paragraph 5 of the Written Statement filed by the Petitioner to contend that the Respondents/ Employees were deployed by a contractor and there was no privity of contract/ relationship between the Petitioner and these four employees.

7. Shri Upadhye, learned Advocate for the Petitioner, then draws my attention to the cross-examination of the Complainants/ Employees to indicate that they admitted therein that they were deployed through the labour contractor. He, therefore, submits that these factors would, therefore, clearly indicate that these four employees were admittedly the contract labourers and they were not directly appointed by the Petitioner- Principal Employer.

8. He places reliance upon the judgment of the Guwahati High Court in the case of Jatin Rajkonwar and others Vs. The Management of Oil and Natural Gas Corporation Ltd., and others, , 2015 LLR 1170 to contend that the Employer-Employee relationship has to be proved by the workman. Completion of 240 days in continuous employment has to be proved by the workman.

9. He also places reliance upon the judgments of the Apex Court in the cases of Vividh Kamgar Sabha Vs. Kalyani Steels Limited, reported in , 2001[1] CLR, page 532 and Cipla Ltd., Vs. Maharashtra General Kamgar Union, 2001(2) Bom.C.R. (S.C.) 822 : (2001) 2 SCC 381. He specifically relies upon the observations of the Apex Court in paragraph 5 of Kalyani Steels Limited (supra) and in paragraphs 7, 8 and 9 of Cipla Limited (supra).

10. Shri Shahane, learned Advocate for Respondent Nos. 1 to 4/ Employees, submits that though they were working directly through the Principal Employer on core activities, they were made to believe that Respondent No. 5 herein was

their Labour Contractor. Since they were working with the Principal Employer on the main activities, they realized that they were being deprived of regularization by the Principal Employer. Therefore, they preferred the complaints before the Industrial Court at Ahmednagar claiming regularization in the service of the Petitioner.

11. Shri Shahane clarifies that on the date of filing of the complaints by the Respondents/ Employees, the judgments of the Apex Court in the cases of Kalyani Steel and Cipla Limited (supra) as well as in the case of General Labour Union (Redflag) vs. Ahmedabad MIT, , 1995 Supplement (1) SCC 175, were not delivered. He, therefore, submits that the Industrial Court invoked it's jurisdiction and the Respondents/ Employees continued in employment with the Petitioner.

12. Shri Shahane submits that the Respondents/ Employees did not suppress any fact from the Industrial Court. They pointed out that Respondent No. 5 was only indicated as a labour contractor. However, the labourers were engaged directly by the Petitioner/ Management. In the Written Statement, the Petitioner only denied the Employer-Employee relationship and claimed that the Respondents/ Employees were engaged through a labour contractor.

13. He further submits that the recording of oral evidence commenced before the Industrial Court sometime in the year 2007. Not a single document for the period 1985 till 1999 was produced by the Petitioner on record before the Industrial Court to support its contention that the Respondents/ Employees were working through the labour contractor and they were working on the garden activities.

14. He submits that it is a matter of record and is evident from the record and proceedings available before the Court that all the documents that the Petitioner produced, were from the year 2000 onwards. He, therefore, submits that the only inference that can be drawn is that the Petitioner manufactured the documents from the year 2000 onwards only to mislead the Industrial Court on the ground that there was no Employer-Employee relationship.

15. He further submits that one license under the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as "the CLRA Act, 1970") was produced by Respondent No. 5/ Contractor which was dated 30.10.1990. However, the said contractor was exposed by the fact that the said license was not with regard to the Petitioner Company, but was with regard to a totally different company which was neither party to the proceedings, nor was it subject matter of the litigation.

16. He further submits that from the year 2000 onwards, the Petitioner surreptitiously converted the Respondents/ Employees on paper as contract labourers and started maintaining the attendance record and payment record through Respondent No. 5/ Contractor from the year 2000 onwards. The provident fund record was also created through Respondent No. 5 from the year 2000 only to create a make believe picture that the original Complainants were

contract labourers and hence, the complaints would not be maintainable in the light of the judgments of the Apex Court in the cases of Redflag and Cipla Limited (supra).

17. He further submits that whatever documents that were prepared by the Petitioner were keeping in view the judgments of the Apex Court in the cases of Kalyani Steel and Cipla Limited (supra) only to defeat the claims of the Complainants/ Employees and oust the jurisdiction of the Industrial Court. He, therefore, submits that this petition deserves to be dismissed.

18. Respondent No. 5 is served and has caused an appearance through an Advocate. None appeared for Respondent No. 5 on 28.01.2016 and even today. However, Shri Upadhye submits that Respondent No. 5 supports the case of the Petitioner.

19. I have considered the submissions of the learned Advocates as have been recorded herein above.

20. It needs to be noted that this petition is before this Court after the Industrial Court has fully adjudicated upon Complaint (ULP) Nos. 222 to 225 of 1991. After complete trial and after the impugned judgment and order has been delivered in the complaints, this petition has been brought to this Court.

21. It also needs to be noted that when the complaints were instituted on 22.04.1991, all the Respondents / Employees were in the employment. The Petitioner/ Management filed it's Written Statement wherein, it is specifically contended that the Complainants were the employees of the Contractor and they were deployed by the Contractor with the Petitioner which claimed to be the Principal Employer. It was also contended that the Respondents/ Employees were working in the garden activities and not on the permanent nature of activities of the Petitioner.

22. With the assistance of the learned Advocates appearing for the respective sides, I have gone through the record and proceedings which have been received from the Industrial Court, Ahmednagar.

23. There is no dispute that all the documents produced by the Petitioner as well as the contractor pertain to the years 2000 and onwards. The cause of action set out in the complaints is in relation to the events that had occurred in between 1985 and 1991. Besides a mere contention in the Written Statement by the Petitioner and Respondent No. 5 that the Complainants are contract labourers, there was nothing placed on record before the Industrial Court to indicate that these Complainants were engaged by the contractor, deployed by the contractor and were being paid wages by and through the contractor.

24. It is quite surprising that the Petitioner as well as Respondent No. 5/ Contractor have chosen not to produce even a shred of paper worth its evidentiary value before the Industrial Court for the period 1985 to 1991 and also till the year 1999 even to generate some support to their contentions in the

Written Statement that the Complainants were all along deployed through the labour contractor and were engaged purely as contract labourers.

25. The Complainants indicated to the Industrial Court through the complaints that they are shown to be deployed through a labour contractor. Having said that and in the light of the fact that the ratio laid down by the Apex Court in the cases of Red Flag, Kalyani Steel and Cipla Limited (supra), the Petitioner/ Management could have brought on record such documents which would have indicated that the Complainants were contract labourers right from the day they were deployed purportedly through the labour contractor. It is unbelievable that the Petitioner did not realize the value of documents in it's own interest. Moreover, all the documents that were produced before the Industrial Court were from the year 2000 onwards.

26. The CLRA Act, 1970 mandates the preservation of documents of the Contractor by the Principal Employer immediately after the calendar month of working is over. In short, after the working for a particular month is concluded, the original records with regard to the working of contract labourers in that month are to be handed over to the Principal Employer and to be preserved by the Principal Employer. In the backdrop of these provisions, the only inference that can be drawn is that the Petitioner-Management was either not maintaining any record about the Respondents/ Employees or that there was direct relationship between the Petitioner and the Respondents. In this backdrop, the Petitioner cannot be permitted to take advantage of it's own wrong and hence, the benefit ought to go to the Respondents/ Workers.

27. The Petitioner has relied upon the judgment of the Guwahati High Court in the case of Jatin Rajkonwar and others (supra). Paragraphs 13 and 14 of the said judgment read as under :-

"13. The existence of employer/employee relationship between the management and the workmen has to be tested by applying multiple tests and no magic formula can be propounded to say that a particular factor in a given case should be the deciding factor (see Silver Jubilee Tailoring House Vs. Chief Inspector of Shops and Establishments, , (1974) 3 SCC 498). In Balwant Raj Saluja (supra), the Apex Court spoke about the test of complete administrative control to establish the employer/employee relationship. The relevant factors, inter alia, would include, according to this decision are :-

- (i) who appoints the workers;
- (ii) who pays the salary/remuneration;
- (iii) who has the authority to dismiss;
- (iv) who can take disciplinary action;
- (v) whether there is continuity of service; and
- (vi) extent of control and supervision i.e. whether there exists complete control

and supervision.

But it is apparent that these parameters are only illustrative and there could be additional inputs in given circumstances.

14. But the onus to prove the employer/employee relationship is certainly on the workmen who claim benefits by pleading existence of such relationship. This was the opinion of the Supreme Court in Electronics Corporation of India Service Engineers Union (supra) and also in Kanpur Electricity Supply Company Ltd., (supra)."

28. In paragraph 10.1 of the said judgment, the Guwahati High Court concluded that merely because there was no registration of a labour contractor, the contract labourers cannot become the employees of the Principal Employer. However, in the instant case, from the year 1985 till 1999, the Petitioner has not produced any document to support it's contention that the Respondents/ Employees were the contract labourers.

29. The Petitioner has then relied upon the judgment of this Court in the case of Janprabha Offset Workers vs. , 2007 (3) BCR 91, to support it's contention that the complaint would be rendered untenable if the Employer can establish that the Complainants were never appointed by the Principal Employer and they were deployed through the labour contractor. For the reasons recorded above, the said judgment would not apply to the case of the present Petitioner as the Petitioner has not produced a single sheet of paper for the period 1985 to 1999 to support it's contention that the original Complainants were deployed through the labour contractor and have throughout worked as contract labourers.

30. Shri Shahane has relied upon the case of Fulchand Baburao Gedam and others Vs. Lokmat , 2007(6) BCR 28 decided by the Division Bench of this Court. In the said judgment, I find that the Division Bench of this Court has concluded in paragraph 17 that it was not the Employer's case that the Complainants were contract employees genuinely employed as such and therefore, the complaints were not maintainable. In the instant case, the Petitioner has specifically contended that the Complainants are the employees of the contractor. I, therefore, find that this judgment of the learned Division Bench would be of no assistance to the Respondents/ Employees.

31. The Respondents/ Employees have relied upon the judgment of the learned Single Judge of this Court in the case of Akhil Bhartiya Shramik Kamgar Union vs. Buildtech Constructions and others, , 2004(II) CLR 179. The observations of the learned Single Judge in paragraphs 7 and 9 read as under :-

"7. The principal question canvassed on behalf of the petitioners is: whether it was sufficient for the respondents to merely deny the relationship of employee-employer in the affidavit in reply and, can that alone be the basis for ousting the jurisdiction of the Court to try and decide the complaint as filed? It is submitted on behalf of the petitioners that such a stand taken in the reply affidavit as filed

for opposing the complaint, by itself, will not be sufficient; but something more was required to be done and especially when the petitioners had made a formal application before the lower Court, calling upon the respondents to produce certain documents, namely, muster-cum-wage register, cash register, bonus register, leave register, audited balance sheet and profit and loss account, income tax returns for the period between January 1999 to December 2002. It is the case of the petitioners that upon production of the said documents, the Court could have ascertained the fact as to whether the stand taken in the reply on behalf of the Respondents, was false, frivolous, vexatious and bald denial only with a view to create a smoke screen to oust the jurisdiction of the Court. It is argued that it was open to the Industrial Court to examine this limited aspect of the matter only when it could be said to have answered the issue of jurisdictional fact, so as to justify its view that it had no jurisdiction to try and decide the complaint. On the other hand, if the said aspect was to be answered in favour of the Petitioners, then it would necessarily follow that the stand taken on behalf of the Respondents, being mala fide, ought to be discarded and for which reason, the Court could and ought to proceed to try and decide the complaint as filed. To support this submission, learned Counsel for the Petitioners has placed reliance on the decisions reported in 1975 L.I.C. 1561, Ramakrishna Ramnath v. The State of Maharashtra and Ors., decision of the Division Bench of this Court (Paras 6 and 7), , AIR 1962 SC 486, Bidi, Bidi Leaves and Tobacco Merchants' Association and Ors. v. The State of Bombay (Now Maharashtra) & Ors. (para 20) , (1963) 3 S.C.R. 540, The Management of Express Newspaper Ltd. v. Workers & Staff Employed Under It & Ors. (Page 549), , 1979 (2) S.C.C. 572, Mohammed Hasnuddin v. State of Maharashtra, (Para 25), , 2003 (7) Supreme 523, Sarva Shramik Sangh v. M/s. Indian Smelting & Refining Co. Ltd. & Ors. (Para 21) and lastly, , 2002 1 CLR 999, Hindoostan Spg. & Wvg. Mills Ltd. V. Sharad G. Khanolkar & Ors. (Para 13).

8. On the other hand, Counsel for the Respondents would submit that the law is well settled that the complaint filed under the provisions of the Act could proceed only when the relationship of employer and employee is undisputed or indisputable, In the present case, since the Respondents had taken a specific stand in the reply affidavit that the complainants were self employed persons and were offering their services to the Respondents on job basis i.e. contract of work and were paid on daily basis on performance of work undertaken by them, the question of relationship of employer and employee was obviously contentious issue, and in such a case, the Court had no option but to dismiss the complaint, being without jurisdiction. To buttress this submission, reliance was placed on the decisions reported in , 2001 (1) Supreme 76, Vividh Kamgar Sabha v. Kalyani Steels Ltd. and Anr., (2001) 1 CLR 754 - Cipla Ltd. v. Maharashtra General Kamgar Union & Ors., , 2003 (97) FLR 159, Prop. Lokmat News Papers Ltd. v. Prabhakar Rambhauji Choudhari & Ors., 2002 III CLR 3, Joseph Leslie & Company v. Engineering Workers & Ors., 2004 (1) L.L.N. 1, Sarva Shramik Sangh V. Indian Smelting and Refining Company Ltd. & Ors. and lastly, , 2003

(7) Supreme 523, Sarva Shramik Sangh v. M/s. Indian Smelting and Refining Company Ltd. and Ors.

9. Indubitably, it is well established that the complaint filed under the Act can proceed only if the relationship of employer-employee is undisputed or indisputable. However, the principal question that arises for my consideration is : whether it is enough for the respondents to merely deny on affidavit-in-reply or in the written statement, the relationship of employer-employee, so as to oust the jurisdiction of the Court to proceed with the complaint as filed. In my opinion, mere statement of denial of relationship made in the reply affidavit or for that matter written statement, by itself, cannot be the basis for taking the view that the Court has no jurisdiction. In the first place, issue of jurisdiction of the Court is to be determined from the averments in the Plaint and not on the basis of the defences raised in the written statement. Even if the Court were to look into the defence of the opposite side, mere denial of relationship of employer-employee between the parties, by itself, is not enough. For, the opposite side is obliged to give or supply particulars to enable the Court to take the view that the defence so taken is neither false, frivolous, vexatious and vague. That is so because, whether the stand taken by the opposite side is bona fide or not; is a matter which, nevertheless, can and ought to be enquired into by the Court before which, such a stand is taken. That issue is obviously a jurisdictional fact, to be enquired into by that Court. In the event, the Court was to take the view that the stand taken in the reply affidavit or the written statement regarding the relationship between the parties; is mala fide, then obviously, such a stand will have to be discarded and the Court can proceed to decide the complaint on merits, on the assumption that the relationship between the parties of employer and employee, does exist or is indisputable. To overcome this position, Counsel for the Respondents and placed reliance on the decisions referred to above. However, in my opinion, in none of the aforesaid decisions pressed into service on behalf of the respondents, the Court has gone to the extent of observing that mere denial of relationship in the written statement is inviolable and the Court would, therefore, hold that contentious issue arises regarding the relationship between the parties. On the other hand, I find substance in the submissions canvassed on behalf of the Petitioners that if such a stand was to be accepted, that would result in enabling the employer to drive the workmen to protracted litigation, to first establish the relationship, which otherwise is undisputed or indisputable from the available record, as existing between the parties. For, it will also result in bestowal of premium on the false plea taken by the employer, which ought to be eschewed. Reliance has been rightly placed on the decision of the Division Bench of our High Court in the case of Ramakrishna Ramnath, (supra). In Para 6 of this Judgment, the Division Bench has observed -"where it is disputed by the employer that the person who wants to invoke the jurisdiction of Labour Court, is not a "workman", as defined in the Act, then the existence of the basic jurisdictional fact necessary for the exercise of jurisdiction by the Labour Court is put in issue and the Labour Court

as a Court of limited jurisdiction bestowed upon it by the statute, must first satisfy itself that the facts which give jurisdiction to it to proceed further into the inquiry either to the existence of the right or to the entitlement of the person who wants that right to be executed exist". It is further observed that the question of title or status of the person so applying, is an incidental matter. That was a case where the workmen had invoked provisions of Section 33-C(2) of the Industrial Disputes Act. The Court has adverted to the purpose of enacting the said provision by observing that the same was enacted to provide a speedy remedy to individual workman. It further observed that, if on a mere raising of the objection by the employer that the employee who has made an application under Section 33-C(2) is not a workman, the Labour Court is to be divested of the jurisdiction vested in it under that provision the very object of enacting Section 33-C(2) could be frustrated by the employer. It will be also useful to draw analogy from the principles enunciated by our High Court in the matters of Bombay Tenancy Agricultural Lands Act in the case of Pulmati Shyamlal Mishra and Anr. v. Ramkrishna Gangaprasad Bajpai and Ors. (1981 Mh.L.J. 321) and Pandu Dhondi Yerudkar v. Ananda Krishna Patil, (, Bom. L.R. 368) In those cases, in spite of express provision such as Sections 85 and 85A of the Tenancy Act, excluding jurisdiction of the Civil Court to try and decide any issue or question which is by or under the said Act is required to be settled, decided or dealt with by the Authority under that Act, it is held that it is still open to the Civil Court to ascertain whether the plea taken in the written statement is demonstrably false, frivolous, vexatious, and mala fide. And if the Civil Court was to form that opinion, it may decline to make reference to the Authority, though required under the Act. In Pulmati's case (supra), the Division Bench of our High Court has held that the Civil Court is not under any obligation to frame and remit an issue of tenancy mechanically merely on the same being raised in the written statement, without judicial satisfaction of its necessity and justification. The Court has further observed that there can be cases when tenancy plea may appear to be patently frivolous, fraudulent and part of the dilatory strategy, in Pandu's case (supra), this Court has observed that when plea of tenancy is raised and if it is a vague plea, the party can be called upon to provide particulars and upon failure to provide such particulars, the Court should hesitate to frame that issue. Applying the analogy in the aforesaid decisions, to my mind, it is always open to the Court before which complaint under the provisions of the Act has been instituted, to at least enquire into the bona fide of the stand taken in the written statement or reply affidavit with reference to the record produced before it by the respective parties or by requiring them to produce the relevant records. In the case of Hindoostan Spg. And Wvg. Mills Ltd. (supra), in Para 13, it has been observed that if stand regarding the relationship of employer-employee is taken in the reply, it would then be open to the complainant to demonstrate that the relationship was never disputed earlier or that, it is indisputable, based on the pleadings before the Industrial Court. These pleadings would include any annexures to the complaint and the written statement. In other words, merely because a vague or bald stand is taken in the written

statement or reply affidavit, that by itself, cannot be the basis to hold that the Court has no jurisdiction, but then, it is the bounden duty of the Court to make further enquiry as to whether the stand as taken, is bona fide and legitimately available to the employer. It is open to the Court to undertake that limited enquiry; and that would not mean that the Court was to adjudicate upon the issue of existence of relationship of employer-employee as such. In other words, what the Court is expected to find is that, whether the stand of mere denial of relationship, as taken is false, frivolous, vexatious and mala fide. It would be useful to advert to the decision of the Apex Court, on which, reliance has been rightly placed on behalf of the Petitioners in the case of Bidi, Bidi Leaves and Tobacco Merchants' Association and Ors. (supra). Para 20 of this decision reads thus:

"20. One of the first principles of law with regard to the effect of an enabling act, observes Croics, "is that a Legislature enables something to be done, it gives power at the same time by necessary implication to do everything which is indispensable for the purpose of carrying out the purposes in view". The principle on which this doctrine is based is contained in the legal maxim "*Quando lex a liquid concedit concedere videtur et illud sine quo res ipsa ease non potest*". This maxim has been thus translated by Broom thus: whoever grants a" thing is deemed also to grant that without which the grant itself would be of no effect. Dealing with this doctrine Pollock C.B. observed in *Fenton v. Hampton*, (1858) 117 RR 32 at p. 41 Moo PC 347 it becomes therefore all important to consider the true import of this maxim, and the extent to which it has been applied. After the fullest research which I have been able to bestow, I take the matter to stand thus: Whenever anything is authorised, and especially it, as matter of duty, required to be done by law, and it is found impossible to do that thing unless something else not authorised in express terms be also done then that something will be supplied by necessary intendment. This doctrine can be invoked in cases "where an Act confers a jurisdiction it also confers by implication the power of doing all such acts, or employing such means, as are essentially necessary to its execution". In other words, the doctrine of implied powers can be legitimately invoked when it is found that a duty has been imposed or a power conferred on an authority by a statute and it is further found that the duty cannot be discharged or the power cannot be exercised at all unless some auxiliary or incidental power is assumed to exist. In such a case, in the absence of an implied power the statute itself would become impossible of compliance. The impossibility in question must be of a general nature so that the performance of duty or the exercise of power is rendered impossible in all cases. It really means that the statutory provision would become a dead letter and cannot be enforced unless a subsidiary power is implied. This position in regard to the scope and effect of the doctrine of implied powers is not seriously in dispute before us. The parties are at issue, however, on the question as to whether the doctrine of complied powers can help to validate the impugned clauses in the notification".

(emphasis supplied)

32. In the case in hand, akin to the facts set out in the Akhil Bhartiya Vs. Buildtech Construction case (supra), the Petitioner has only denied the Employer-Employee relationship in it's Written Statement. Besides the denial, there is no document on record to support the contention that none of the Complainants were directly engaged by the Principal Employer. The ratio laid down by this Court would, therefore, be applicable to the case in hand.

33. The Respondents / Employees have also relied upon the judgment of the learned Division Bench of this Court in the case of Hindustan Coca Cola Bottling S/w Pvt.Ltd., Vs. Bhartiya Kamgar Sena and others, , 2001 (III) CLR 1025. The observations of the learned Division Bench in paragraph 13 which are germane to the cause of action of the case in hand, read as under :-

"13. It would be apparent from the above observations of the Supreme Court that if the employer-employee relationship is established by the competent forum, viz. In Industrial Disputes Act or the employer-employee relationship is undisputed or indisputable then the complaint under the MRTU and PULP Act would be maintainable. We hasten to add that as pointed out by the Supreme Court in Cipla Ltd. If at any time the employer-employee relationship is recognized by the employer and subsequently it is disputed such a question would be incidental question arising under Section 32 of the Act and the Labour Court or the Industrial Court as the case may be would be competent to decide such question. However, in a case where the employer had never recognized the workmen as his employees and throughout treated these persons as employees of the contractors, the court constituted under Section 28 of the MRTU and PULP Act will have no jurisdiction to entertain the complaint unless the status of relationship of employer-employee is first determined in a proceedings under the Industrial Disputes Act."

34. It is, thus, clear that the precondition for seeking remedy under the MRTU & PULP Act, 1971 is the necessity of the existence of the Employer-Employee relationship at some point in time. So also, if there is no such relationship and if the Complainants are contract employees right from the beginning of their services, the Principal Employer as well as the Contractor can place on record the documents to prove prima-facie that no such relationship existed or was established. This would, therefore, prove that the relationship is disputable right from the day the contract labourers were deployed in employment and then the complaint would be rendered untenable at its threshold.

35. In the case in hand, barring the mere denials in the Written Statements of the Petitioner as well as Respondent NO.5/ Contractor, for a period of 14 years of employment from 1985 to 1999, there was nothing placed before the Industrial Court to indicate that the Complainants were indeed contract labourers and were working as contract labourers from the first day they were deployed.

36. Reliance is also placed upon the judgment of the Apex Court in the matter of

Bhilwara Dugdh Utpadak Sahakari S. Ltd., vs. Vinod Kumar Sharma Dead By LR's and others, , 2011 STPL (Web) 751 SC. The Apex Court in the said judgment has dealt with the ever growing fashion on the part of the Employers to resort to mere denials of the Employer-Employee relationship through their Written Statement and attempt to oust the jurisdiction of the courts under the MRTU & PULP Act, 1971. Showing concern for such growing tendency, the Apex Court has observed in paragraphs 3 and 11 as under :-

"3. This appeal reveals the unfortunate state of affairs prevailing in the field of labour relations in our country. In order to avoid their liability under various labour statutes employers are very often resorting to subterfuge by trying to show that their employees are, in fact, the employees of a contractor. It is high time that this subterfuge must come to an end.

11. Mr. Puneet Jain, learned counsel for the appellant submitted that the High Court has wrongly held that the appellant resorted to a subterfuge, when there was no such finding by the Labour Court. The Labour Court has found that the plea of the employer that the respondents were employees of a contractor was not correct, and in fact they were the employees of the appellant. In our opinion, therefore, it is implicit in this finding that there was subterfuge by the appellant to avoid its liabilities under various labour statutes."

37. The Apex Court, therefore, concluded that since the Labour Court has arrived at a finding on facts that the Respondents were not contract employees, but were the employees of the Employer, the appeal preferred by the Employer was dismissed.

38. Similarly, in the case in hand, after a complete trial, the Industrial Court has arrived at a conclusion that for the service period from 1985 to 1999, the Petitioner/ Employer has not been able to place any document before the Industrial Court to support it's contention set out in the Written Statement.

39. The Industrial Court has observed that the attendance-cum- wage register and the muster roll that was produced in xerox form, was for the period 2000 to 2003. The original documents were held back. The muster rolls for the years 1985 onwards were not produced either by the Petitioner or Respondent No. 5- purported contractor. It further recorded a finding on facts in paragraph 16 that though the Petitioner-Employer contended that there was an agreement with the Contractor, not a single agreement was placed on record. No copy of the licence and registration under the CLRA Act, 1970 was produced. The pay slips or pay registers for a period of 14 years, which are germane to the cause of action, were also not produced. The Industrial Court, therefore, concluded that the Employer seems to have conspicuously held back the documents from the Court despite having an opportunity to produce the same so as to justify it's contentions in the Written Statement.

40. In this backdrop, I do not find that the impugned judgment of the Industrial Court could be termed as being perverse or erroneous. This petition being devoid

of merit is, therefore, dismissed.

41. Rule is discharged.

42. The record and proceedings received from the Industrial Court, Ahmednagar in Complaint (ULP) Nos. 222 to 225 of 1991 be returned forthwith.

43. The pending Civil Application does not survive and is also disposed of.