

(2001) 01 SC CK 0031

In the Supreme Court Of India

Case No : Civil Appeal No. 3375 of 1998

Vividh Kamgar Sabha

APPELLANT

Vs

Kalyani Steels Ltd. and Another

RESPONDENT

Date of Decision : 09-01-2001

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28(1)

Citation : AIR 2001 SC 1534 : (2001) AIRSCW 170 : (2001) 88 FLR 727 : (2001) 1 JT 303 : (2001) 1 LLJ 569(2) : (2001) 3 RLW 373 : (2001) 1 SCALE 82 : (2001) 2 SCC 381 : (2001) SCC(L&S) 436 : (2001) 1 SCR 108 : (2001) 1 Supreme 76 : (2001) 1 UJ 454

Hon'ble Judges : S. Rajendra Babu, J;S. N. Variava, J

Bench : Division Bench

Advocate : P. Cama and Raju Ramachandran, Sunil Gupta, Makarand D. Adkar, S.D. Singh, Padmakar Kulkarni, Rajesh Kumar, Rajiv Joshi, Ms. Aparajitha Singh, Ms. Meenakshi Arora, Prashant Kumar and Gaurav Agrawal, for the Appellant;

Final Decision : Dismissed

Judgement

S. N. Variava, J.

This Appeal is against an Order passed by the Industrial Court on 20th August, 1996.

Briefly stated the facts are as follows:

The Appellants claim to be a Union representing the workmen of a Canteen run by the Respondents. The Appellant Union claimed that even though the Appellants are actually the employees of the Respondents, the Respondents are not treating them at par with other employees and have notionally engaged contractors to run the canteen. As the Respondents were not accepting the Appellants' claim to treat them as their employees, the Appellant filed a Complaint u/s 28(1) of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereinafter called the MRTU & PULP Act)

alleging that the Respondents had engaged in unfair labour practices under Item Nos. 1, 1(a), 1(b), 4, 4(a) of Schedule II and Items 3, 5, 6, 7, 9 and 10 of Schedule IV of the MRTU & PULP Act. This Complaint came to be dismissed by the impugned Order dated 20th August, 1996.

The Appellant Union has filed an SLP directly in this Court against this Order as the High Court of Bombay, in the case of *Krantikari Suraksha Rakshak Sanghatana Vs. S.V. Naik and Others*, , has already held that the Industrial Court cannot in a complaint under MRTU & PULP Act abolish contract labour and treat employees as direct employees of the company.

At this stage it must be mentioned that this Court has also in the case of *General Labour Union (Red Flag), Bombay Vs. Ahmedabad Mfg. and Calico Printing Co. Ltd. and Others*, , held that where the workmen have not been accepted by the Company to be its employees, then no complaint would lie under the MRTU & PULP Act. We are in full agreement with the above mentioned view.

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.

Faced with this situation it was submitted that the Respondent Company had always recognised the members of the Appellant Union to be their own workmen. It is submitted that a formal denial was taken only to defeat the claim. We see no substance in this submission. In the written statement it has been categorically denied that the members of the Appellant Union were employees of the Respondent Company. The question has been agitated before the Industrial Court. The Industrial Court has given a finding, on facts, that the members of the Appellant Union were not employees of the Respondent Company. This is a disputed fact and thus till the Appellants or their members, get the question decided in a proper forum, this complaint was not maintainable.

Accordingly, we dismiss this Appeal on the ground that the complaint was not maintainable. We clarify that it is open for the Appellant or their members to raise dispute in this behalf before an appropriate forum provided they are entitled to do so. If they get a declaration to the effect that they are employees of the Respondent Company, then it may be open to them to file such a complaint. It is also clarified that if a dispute as to their status is raised in an appropriate forum then the same will be decided on merits without taking into consideration any observations made or finding given by the Industrial Court in the impugned Order.