

IN THE INDUSTRIAL COURT, MUMBAI

COMPLAINT (ULP)NO. 191 OF 2021

CNR No. MHIC01-000475-2021

Mr.Shahrukh Shahbuddin Khan and ors ...Complainant

Versus

M/s. Amplinno India Pvt.Ltd. and ors ...Respondents

CORAM: S.G. THUBE, MEMBER.

Appearances: Shri A.G.Nagwekar, Advocate for the Complainant.
Shri.Vinayak Palande, Advocate for the Resp No.1.
Shri Manan Sanghai, Advocate for the Resp No.2.

ORDER (BELOW EXH. C-4)

(Passed on 10.10.2023)

1. Heard, both sides Ld. Counsels and perused the application vide Exh.C-4 and say filed by complainant on that application. This application is filed on behalf of Respondent No.2 for dismissal of Complaint on the ground of maintainability. Means, submitted that after carefully gone through the pleading of Complaint and documents which are placed on record on behalf of Complainant, nowhere disclose that, the concern members of complainant union who claimed to be employees are the employees of Respondent No.2 i.e. between concerned member

employee of member Complainant Union and this Respondents never in existence the relationship as employer-employee. Hence, in view of the guidelines and observation of the judgment of Hon'ble Apex Court of “ *Cipla Limited, Sarva Shramik Sangh and Kalyani Steel* ” appears that when employer-employee relationship is not in existence or when the said relationship is in dispute then Industrial Court is not empower to deal with Complaint of unfair labour practices under MRTU & PULP Act. Thus, in short in view of above mention averments and other averments which mention in application submitted that this Complaint is not maintainable against Respondent No.2.

2. On the other hand, Complainant through say/ reply submitted that Respondent No.2 is admittedly principal employer and in the capacity of being principle employer is liable to pay wages of legal dues, so also as per Section 21(4) of Contract Labour (Regulation and Abolition) Act, principal employer is liable for wages of legal dues if other employer fails to pay it. Hence, this application may be rejected.

3. On the basis of rival pleadings of the parties, according to my opinion, following points is/are arised for my determination my finding and reasoning on the said point stated herein after in the forgoing para of this order:

Sr. No.	POINTS	FINDINGS
1.	Whether this Complaint is not maintainable against Respondent No.2 ?	In the Negative (At this initial stage does not survive)
2.	What order ?	As per final order.

REASONS

AS TO POINT NO.1

4. As to this point, Ld. Counsel on behalf of Respondent No.2 argued in the line of averments raised in application C-4 i.e. submitted that due to disputable relationship as employer-employee and due to non existence of the said relationship between this Respondent and concern member employees of Complainant Union, this Complaint is not maintainable against these Respondents. So also, in view of guidelines of Hon'ble Apex Court of the cited ruling of “ *Cipla Limited, Sarva Shramik Sangh and Kalyani Steel* ” appears that when the relationship as employer-employee is disputable then Industrial Court is not empowered to held unfair labour practices under MRTU & PULP Act as well as not entitled to adjudicate the issue of that relationship as an employer-employee. Hence, this Complaint is not maintainable against this Respondent.

5. On the other hand, Ld. Counsel on behalf of Complainant Union submits that, Respondent No.2 being a principal employer is liable to pay wages of legal dues as per

Section 21(4) of Contract Labour (Regulation and Abolition) Act. So also, in this matter, whereabouts of the Respondent No.1 not knowing to Complainant Union hence for the purpose of complying the payment of wages of legal dues of the member employee of the Complainant Union being a principal employer, Respondent No.2 is required and necessary party. Hence, though there is no direct relationship as employer-employee between concern member employees of Complainant Union and Respondent No.2, as employee and employer, then also this Complaint is maintainable against Respondent No. 2. Thus in view of above mention material argument points and other points which argued at length submitted that, application may be rejected.

6. Thus, considering the rival submissions of both sides Ld. Counsel and carefully gone through the documents which are placed on record on behalf of both parties, it appears that, in view of Master Service agreement dated 01.06.2019 which executed between Respondent No.1 & 2 shows nexus of Respondent no.2 with Respondent no.1. hence, at this initial stage, though from the pleading of Complaint, nowhere disclose the direct relationship of employer-employee between concern member employee of Complainant Union and this Respondent. Then also, I hold that for the purpose of adjudication of that aspect of employer-employee relationship between this Respondent and member employees of complainant Union required to record oral and documentary evidence of both the parties. Because the said issue involved mixed question of law and fact. Hence, at this initial stage, in the

aforesaid application of Respondent No.2, not having strong substance.

7. Then secondly, carefully gone through the provision of Section 21(4) of Contract Labour (Regulation and Abolition) Act, appears that, principal employer is also held responsible for wages of legal dues of the employees. In the case in hand, the Complainant Union through its say submits that, Respondent No.2 being a principal employer is liable to pay wages of legal dues of concern member employees of Complainant Union. Thus, whether Respondent No.2 is a principal employer or not and whether if being a principal employer is liable to pay wages of legal dues. The said aspects/ issues can be determined properly only after recording oral and documentary evidence of both the parties. Hence, again I hold that, this application is not maintainable at this initial stage.

8. It is true in view of guidelines and observations of cited ruling Hon'ble Apex Court of "***Cipla Limited, Sarva Shramik Sangh and Kalyani Steel***" held that, when relationship as employer employee is disputable or not in existence, then Industrial Court is not empower to declare unfair labour practices under MRTU & PULP Act and is not entitled to adjudicate that aspect/issue of relationship. Thus, with due respect of the said guidelines of Hon'ble Apex Court, I hold that at this initiate stage, the said

guidelines are not helpful to Respondent No.2 for showing that this Complaint is not maintainable against respondent No.2

9. Thus, in result of above reasoning I recorded my finding on point No. 1 in the Negative/ at this initial stage does not survive and proceed to pass the following order :-

ORDER

1. Application vide Exh. C-4 is hereby rejected.
2. No order as to costs.

Date: 10.10.2023

(S.G. THUBE)
Member
Industrial Court, Mumbai.

ppk/-