

**IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI
BEFORE SHRI. S.A.QUAZI, MEMBER
COMPLAINT (ULP) NO. 350 OF 2015**

Akhil Bhartiya Kamgar Sanghatan

.... Complainant

Versus

**M/s. Shri Mankeshwar Mechanical Works
& Anr.**

.... Respondents

**COMMON ORDER BELOW
EXHS. C-11, C-14, C-15 AND C-16
(Declared on 28.07.2017)**

1. These applications Exh. C-11, C-14, C-15 and C-16 have been filed by the respondents and have been pressed at the stage when already interim relief application has been rejected and thereafter, preliminary issues have been framed and the matter is kept for evidence and the complainant has filed affidavit of examination-in-chief of its witness. Basically these applications appear to be with reference to the respondent's objection in respect of maintainability of the instant complaint. Therefore, on these applications, I have heard the parties on 07.06.2017, on the request of the Ld. Advocate of the respondents.

2. The instant complaint has been filed by Akhil Bhartiya Kamgar Sanghatana alleging that the complainant is registered trade union and complaint is filed in respect of 13 persons listed in Exh. 'D'

annexed to the complaint. According to the complainant, these 13 persons are employees of the respondents and respondents have indulged in unfair labour practice. It is further contended in the complaint that earlier, one Sarva Shramik Sanghatana (K.V) Union had filed Compliant (ULP) No. 429 of 2012 and that complaint had been dismissed by order dated 05.04.2013 by the Industrial Court. The said dismissal order has been challenged before Hon'ble Bombay High Court by filing Writ Petition No. 2626 of 2014 and the said Writ Petition is admitted and is pending. The aforesaid workmen have resigned from said earlier union and have become members of the Complainant Union, Akhil Bhartiya Kamgar Sanghatana, and therefore, the said later union has filed this complaint for the reliefs as asked for in the complaint. The interim relief application filed by the complainant in this complaint has been rejected by the order dated 21.03.2016 on the ground that the maintainability of the complaint has been challenged on the ground that appropriate Government in the instant case is Central Government and there is no employer-employee relationship and thus the complainant has no prima facie case. After the said order of the rejection of interim relief application, the Court has framed preliminary issues on 30.06.2016. Then matter was fixed for evidence.

Thereafter, on 29.07.2016, the respondents have filed application at Exh. C-11. The said application is titled as application for review of order dated 15.07.2016. It appears from roznama dated 15.07.2016 that the Court has observed that "the matter is kept by consent for evidence of complainant and the matter is adjourned on

22.07.2016". Hence, Exh. C-11 appears to be with reference to this observation. In the said application Exh. C-11, the respondents appear to have submitted that at the time of hearing of application for interim relief the submission was made on behalf of the respondents that this Court has no jurisdiction and power to conduct enquiry and record evidence under the provisions of MRTU & PULP Act, 1971 and even issues on said preliminary objections need not be framed. In such circumstances, it is submitted in the application at Exh. C-11 that said objection regarding lack of jurisdiction of this court and the maintainability of the complaint, has been raised by the respondents, in view of the fact that respondents have denied the existence of relationship of master and servants between complainant and respondents and that appropriate Government is Central government and not State Government. On 07.05.2016 at Exh. C-9, application was made by respondents taking said objection in respect of jurisdiction of court to entertain this complaint. Similar application was filed on 11.03.2016 vide Exh. C-1. Then in the application Exh. C-6, respondents have, in the light of aforesaid facts and circumstances, prayed that this Court may clear the respondent's objections raised by them in the Written Statement in respect of jurisdiction of this Court to entertain this complaint.

The Complainant appears to have given reply on this application at Exh. C-11. The complainant has denied the contentions in the said application. It is submitted by the complainant that this application is filed to delay the matter. The Court has kept the matter for deciding it on merit. The complainant has filed affidavit of

examination-in-chief of its witness and matter is for cross examining the said witness, and therefore, this application Exh. C-11 is liable to be rejected.

3. The application at Exh. C-15 filed by the respondents titled as application by respondents for placing facts on record. It is submitted that, respondents have filed application at Exh. C-11, as noted herein earlier. In Exh. C-15, respondents have submitted that, the workmen concerned in the instant complaint are the same workmen who are the members of earlier union Sarva Shramik Sanghatana (K.V) Union and they have filed Writ Petition before Hon'ble Bombay High Court against the order of dismissal of their Complaint (ULP) No. 429 of 2012. The said Writ Petition is admitted and pending, but no interim relief is granted in favour of the said workmen. Therefore, having failed to get any interim relief, the instant complaint has been filed to obtain relief which is not granted by the Hon'ble Bombay High Court in the Writ Petition. It is submitted that, in the earlier complaint (ULP) No. 429 of 2012, this Court presided over by Ld. M.K. Mahajan has held that Complaint is not maintainable on the ground of disputed relationship as well as on the ground that Central Government is the appropriate Government and therefore this Court has no jurisdiction to entertain the complaint. It is further submitted by respondents in the application at Exh. C-15 that, Hon'ble Bombay high Court in the case of ***India Seamless Metal Tubes Ltd. vs. Rambau Evale and Ors. 2001 (91) FLR 1079*** has held that when there is disputed relationship of employer-employee,

Industrial Court has no power and jurisdiction to frame issues and record evidence. Therefore, respondents have submitted in the application at Exh. C-15 that this Court should hear the parties on application dated 29.07.2016 filed at Exh. C-11 and pass appropriate orders in the matter.

The Complainant has given Say on this application Exh. C-15 and opposed it saying that the respondents have filed said application to delay the matter. It is submitted that this Court has passed order on Exh. C-7 on 18.03.2016 and further order dated 09.12.2016 is passed and thereafter the matter is kept for cross examination of the complainant.

4. The third application filed by respondents is Exh. C-14. It is on the same lines as application Exh. C-11 has been filed by respondents in respect of maintainability of complaint and on the ground lack of jurisdiction because of disputed relationship of employer-employee and on the ground that appropriate government in the instant case is Central Government, and not State Government. It appears that no reply has been filed by complainant on this application.

5. Forth application at Exh. C-16 is filed by respondents on 11.05.2017 contending that before proceeding to record evidence and to frame issues, it is expected that Court should decide the respondent's application in respect of maintainability of the complaint and therefore, it is requested that respondents be heard on this point

and thereafter separate order may be passed in the matter of the maintainability of the Complaint.

The complainant has given say on this application Exh. C-16 and opposed it on the ground that the matter is already proceeded for recording evidence and cross examination of complainant's witness.

6. Ld. Advocate of the respondents has pointed out that at the hearing of interim relief application also similar objections were raised by respondents in respect of maintainability of the complaint. The Ld. Advocate of the respondents has submitted that, the instant complaint has been filed under MRTU & PULP Act, 1971 assuming and alleging that there is an existence of relationship between complainant and respondents as employer-employee. It is submitted that respondents have been since beginning denying the allegations about existence of this relationship. On the same basis it is submitted that this court has no jurisdiction to adjudicate and decide the issue as to existence of relationship of employer-employee. It is submitted that the court has framed such issue and therefore, the matter is being proceeded allowing the parties to adduce their evidence on this issue. Ld. Advocate of the respondents has submitted that such conduct of instant proceeding is not permissible under law, when the relationship of employer-employee is in dispute. It is submitted that no issues are required to be framed and parties are not required to be given opportunity to adduce evidence on this issue. It is submitted that since relationship of employer-employee becomes disputed, the Court under

MRTU and PULP Act has no jurisdiction to entertain such complaint. In view of this, it is submitted that the parties may be allowed to advance their argument on the basis of pleadings and documents filed therewith. In support of these submissions, the Ld. Advocate of the respondents has relied on following decisions. :-

1. *Indian Seamless Metal Tubes Ltd. vs. Sunil Rambahu Iwale & Ors. 2002 (4) Mh. L. J. 151*
2. *Hindustan Coca Cola Bottling S/W Pvt. Ltd. vs. Bhartiya Kamgar Sena & Ors. 2001 III CLR 1025 (Bombay)*
3. *Smt. Chandrakala Lalaji Misal vs. Marathwada Medical Research and Rural Development Institution Ltd. 2016(1) ALL MR 350*
4. *Quadricon Pvt. Ltd. & Ors. vs. Maxi D'Souza & Ors. 2004 III CLR 530 (Bombay)*
5. *Bhartiya Kamgar Sena vs. Udhe India Ltd. 2007 (6) Mh. L.J.*
6. *Cipla Ltd. vs. Maharashtra General Kamgar Union 2001 (1) CLR 764.*

7. On the other hand, Ld. Advocate of the Complainant has submitted that already issues have been framed. It is submitted that complainant has filed affidavit of examination in chief of its witness after framing of issues. Therefore, matter may be decided on the issue after allowing the parties to adduce evidence. Ld. Advocate of the Complainant has submitted that most of the aforesaid decisions, relied upon by the Ld. Advocate of respondents, have been considered by Hon'ble Bombay high Court in the case of *Akhil Bhartiya Kamgar*

Union vs. Buildtech Constructions in Writ Petition No. 2709 of 2003 dated 31.03.2004. The Ld. Advocate of the Complainant has produced uncertified copy of the said decision. It is submitted that ratio laid down in the said decision is that denial of relationship of employer-employee, does not take away the jurisdiction of Court to allow the parties to adduce evidence and to decide the issue in respect of existence of such relationship. It is submitted that on such issue the parties may be allowed to adduce evidence and hence the Ld. Advocate of complainant has submitted that objections taken by the respondents for framing of the issues and allowing the parties to adduce evidence thereon, are baseless and they are required to be rejected.

8. I have examined the aforesaid submissions of the parties and I have gone through the decisions relied upon by the parties (supra). In the cases of Cipla Ltd. and Hindustan Coca Cola Bottling Pvt. Ltd. the Hon'ble Supreme Court has held that the case of workmen that they have been directly employed by the appellants company but the contract itself is a camouflage needs to be adjudicated by appropriate Industrial Court or Labour Court under Industrial Disputes Act and such question cannot be examined by the Labour Court or Industrial Court constituted under the MRTU & PULP Act, even for deciding issue as to existence of relationship of employer and employee.

9. In the case of **Indian Seamless Metal Tubes Ltd. vs. Sunil**

Rambhau Iwale 2002 MLJ, 151 relied upon by the Ld. Advocate of the respondents, it is held by that in view of decision of Hon'ble Supreme Court of Cipla case (Supra), there is no necessity to frame issues in respect of existence of relationship of employer-employee and there is no question to allow the parties to adduce evidence on that issue, when existence or non-existence of said relationship of employer-employee cannot be decided by Industrial Court under MRTU & PULP Act.

Similar view was taken in the other decisions, relied upon by the Ld. Advocate of respondents, that Industrial Court or Labour Court constituted under MRTU & PULP Act cannot decide the issue about existence of employer-employee

10. The Ld. Advocate of Complainant has relied on the decision of Hon'ble Single Bench of Bombay High Court in the case of *Akhil Bharitya Shramik Kamgar Union vs. Buildtech Constructions in Writ Petition No. 2709 of 2003* decided on 31.03.2004. In this case, the Hon'ble Bombay High Court has referred the decisions in the cases of (1) *Vividh Kamgar Sabha vs. Kalyani Steels Ld. & anr (2001) Supreme – 76*, (2) *Cipla Ltd. vs. Maharashtra General Kamgar Union & Ors. 2001 (1) CLR 754*, (3) *Prop., Lokmat News Papers Ltd. vs. Prabhakar Rambhauji Choudhari & Ors. 2003 (97) FLR 159*, (4) *Joseph Leslie & Co. vs. Engineering workers & Ors. 2002 III CLR-3*, (5) *Sarva Shramik Sangh vs. Indian Smelting and Refining Co. Ltd. & Ors. 2004 (1) L.L.N.-1*, (6) *Sarva Shramik Sangh vs. M/s. Indian Smelting Refining Co. Ltd. & Ors. 2003*, (7)

Supreme 523. Referring to these decisions including decision in the case of Cipla Ltd., the Hon'ble Bombay High Court has held in the said case of Akhil Bhartiya Shramik Kamgar Union (Supra) that in none of these cases 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. Hon'ble Bombay High Court has further held that issue of jurisdiction of the Court is to be determined from the averment 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 bonafide or not, is a matter which, nevertheless, can be 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 has to take the view that the stand taken in the reply affidavit or the written statement regarding the relationship between the parties, is malafide, then obviously, such a stand will have to be discarded and the Court can proceed to decide the compliant on merit, 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 had placed reliance on the decisions

referred to above. However, Hon'ble High Court has held that in one 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. The Hon'ble High Court in the aforesaid case has further held that there was substance in the submission made on behalf of employee, that if such a stand was to be accepted, that would result in enabling the employer to drive the workmen to protected 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 pleas taken by the employer, which ought to eschewed. It is further observed in the said decision that, reliance has been rightly placed on the decision of the Division Bench of Bombay High Court in case of ***Ramakrishna Ramnath vs. State of Maharashtra reported in 1975 LAB I.C. 1561.*** The Division bench has observed that where it is disputed by the employer that the person who wants to invoke the jurisdiction of Labour Court, is 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. The Hon'ble Bombay High

Court in the case of Akhil Bharitya Shramik Kamgar Union vs. Buildtech Constructions has further observed that question of title or status of the person so applying is an incidental matter. The case of Ramkrishna Ramnathan was a case where the workmen had invoked provisions of Section 33-C(2) of the Industrial Disputes Act. In that case, 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 is 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. Then in the said judgment, Hon'ble Bombay High Court in the case of Akhil Bharitya Shramik Kamgar Union vs. Buildtech Constructions further observed that, it is always open to the Court before which complaint under the provisions of the MRTU & PULP Act has been instituted, to at least enquire into the bonafide 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. The Hon'ble Bombay High Court has also observed that in the case of Hindoostan Spg. & Wvg. Mills Ltd. (2002 (1) CLR 999) it is 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 bonafide and legitimately available to the employer. It is further held that, 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 malafide. The Hon'ble Bombay High Court in the case of Akhil Bharitya Shramik Kamgar Union vs. Buildtech Constructions (Supra) has also referred to the decisions of the Hon'ble Supreme Court in the case of Mohammed Hasnuddin (1997 (2) SCC 572) in the case of Management of Express Newspapers Ltd. (1963 (3) SCR 540) and in the case of Bidi Leaves & Tobacco Merchants' Association & Ors. (AIR-1962 S.C. 486) Referring to these decisions, the Hon'ble Bombay High Court has held that, it is difficult to accept that mere statement of denial of relationship made in the written statement or reply affidavit by the employer, by itself will not be sufficient to hold that contentious issue has been raised.

11. Considering the aforesaid submissions of the parties and ratio laid down in the said judgments relied upon by parties, what

appears is that respondents, in the instant case, have raised issue about non-existence of relationship of employer-employee between complainant and respondents. My Ld. predecessor in the office has framed preliminary issues after deciding the application for interim relief. Thereafter, the matter was kept for evidence of the parties and complainant has filed affidavit of examination-in-chief of its witness. Issues framed are in respect of existence of master and servant relationship, in respect of maintainability of complaint on the ground of lack of jurisdiction and on the point of limitation. The issues framed at Exh.O-5, appear to be such that they were directed to be treated as preliminary issues. At such stage, Ld. Advocate of the respondents has raised aforesaid objection in respect of the proceeding regarding framing of issues, and recording evidence etc. To some extent, I find merits, in the submissions of Ld. Advocate of the respondents, that issue in respect of existence of relationship of employer-employee need not be framed in view of principle laid by Hon'ble Supreme Court in the case of Cipla Ltd. (Supra) as referred above and also by Hon'ble Bombay High Court in the case of Seamless Metal Tubes Ltd., so far as framing of the issues and allowing the parties to adduce evidence in that respect is concerned. However, taking into consideration, the ratio laid down by Division Bench of Hon'ble Bombay High Court in the case of Rambhu Evale, as referred to by Hon'ble Bombay High Court in the case of Akhil Bharitya Shramik Kamgar Union vs. Buildtech Constructions in Writ Petition No. 2709 of 2013 dated 31.03.2004, the question as to bonafide of respondents to raise issue of existence of relationship between parties as employer-

employee will have to be enquired into and decided by this Court. The genuineness of the objection of the respondents will have to be decided on the basis of pleadings of the parties and the documents produced therewith, and if required, the parties may be allowed to adduce evidence to the extent of said issue of bonafide of the respondents to deny the relationship. In this regard reliance is placed on the observations of Hon'ble Bombay High Court in the said case of Akhil Bhartiya Shramik Kamgr Union (Supra) which is as under:-

“12. On the principles expounded by the Apex Court referred to above, I find no difficulty in accepting the submissions canvassed on behalf of the Petitioners that mere statement of denial of relationship made in the written statement or reply affidavit by the employer, by itself will not be sufficient to hold that contentious issue has been raised. In the present case, it is not in dispute that the Petitioners had filed application before the Lower Court, praying that Respondent be directed to produce certain documents. The fact as to whether the stand taken by the Respondents in the reply affidavit relating to relationship of the parties is genuine or malafide, could very well be ascertained from the said documents maintained by the Respondents, if the same were to be produced before the Court below. However, it is not in dispute that the said application has remained undecided before the Industrial Court, which obviously is inappropriate. To find out the bonafide of the stand taken by the Respondents, not only production of the said documents referred to in the said application was imperative; and if the Respondents were to contend that no such documents are available, it will be open to insist upon examination of witnesses or cross examine the affiant, who has stated on affidavit about the relationship between the parties, so as to confront him with

the record produced before the Court or in relation to the stand of unavailability of the record so as to find out bonafide of the stand so taken in the reply affidavit filed on behalf of the Respondent. On the basis of such evidence, if the Court was to find that the stand is not bonafide, then obviously, such a stand will have to be discarded, and that adjudication would be one of jurisdictional fact, which is required to be answered at that stage of the proceedings. In the present case, there is no dispute that the Petitioners have been engaged directly by the Respondents on their establishment. The stand taken by the Respondents is that the Petitioners were well employed persons, who offered their services on job basis i.e. contract of work. That plea will have to be propped by particulars and clinched by the production of documents such as muster-cum-wage register, cash register, bonus register, leave register, audited balance sheet and Profit and Loss Account for the relevant period.”

12. Accordingly, aforesaid applications at Exh C-11, C-14 C-15 and C-16 may be disposed of in terms as are being indicated in following order. Hence, I pass following order:-

ORDER

The applications at Exh. C-11, C-14, C-15 and C-16 are disposed of in following terms:-

1. The objection raised by the Respondents in respect of tenability of Complaint, on account of denial of relationship of employer-employee, will be heard and decided first, to the extent of bonafide of the Respondents to raise this issue in the light of principles laid down in the decisions cited by the parties (Supra),

particularly in the case of Akhil Bharatiya Shramik Kamgar Union vs. Buildtech Constructions dated 31.03.2004 in Writ Petition No. 2709 of 2003 as relied by the Advocate of the Complainant.

2. This issue will be decided on the basis of the pleadings and documents produced by the parties and if required, to the extent of this issue only, parties shall be allow to adduce evidence, if they make appropriate application to this effect.
3. Accordingly, these applications are disposed of, parties to note.

Place: Mumbai.

Date : 28.07.2017

PPK

Sd/-
(S. A. Quazi)
Member

Industrial Court, Mumbai