BEFORE THE MEMBER INDUSTRIAL COURT, MAH., AT SANGLI

Complaint (ULP) No.57 Of 2019

Shri Ashok Ganpatrao Shinde ..Complainant

V/s

1) Managing Director,
Vasantdada Shetkari Sahakari Sakhar Karkhana Ltd., Sangli and Anr. ..Respondents

Order Below Ex.C-8

(Date : 4th May 2022)

By filing this application the respondent No.2 has raised preliminary objection with regard to maintainability of complaint as against respondent No.2. It is the contention of respondent No.2 that there is no employer-employee relationship in existence between the respondent No.2 establishment and complainant nor was it in existence earlier at any point of time. The complainant is retired employee of respondent No.1 sugar factory and has filed the present complaint claiming his final legal dues as against respondent No.1. The respondent No.2 is not aware about the alleged legal dues. Since there is no employer-employee relationship in existence. The complainant has no locus standi to raise any claim against respondent No.2, hence complaint is liable to be dismissed against respondent No.2.

2. It is the contention of respondent No.2 that the respondent sugar factory was given on lease for a period of ten years to the respondent No.2, however, it has only received factory and some part

of office on lease basis. The complainant has no connection with the said lease which was entered into from July 2017 onwards. It was taken under public auction deed floated by financial institution under Securitisation Act being highest bidder and since then the respondent No.2 is running the factory on lease basis. According to respondent the respondent No.2 cannot be made a party to the proceeding as the respondent No.2 has no knowledge about any facts on record pertaining to the dispute in question. Hence respondent No.2 is not even necessary party to the present proceeding. The complaint itself is not maintainable and hence it is liable to be dropped as against respondent No.2.

3. While filing this preliminary objection respondent No.2 has also stated in the application that its right to file detailed written statement and say is reserved. The respondent No.2 has filed written statement at Ex.C-13. The respondent No.2 has lastly prayed to dismiss the complaint with costs against respondent No.2.

4. The complainant has filed his say on this application at Ex.U-6 and came with a case that the respondent sugar factory is admittedly given on long term lease of 10 years from July 2017 to respondent No.2 as respondent No.1 could not repay the loan of Sangli DCC Bank Ltd. According to complainant there is tripartite agreement between respondent No.1, respondent No.2 and Sangli DCC Bank executed on 17/07/2017 and under the said agreement the respondent No.2 has

undertaken to continue all workers of respondent No.1 karkhana and to pay their wages and other monetary dues. It is contended that in view of said agreement the respondent No.2 has also paid gratuity etc. of many retired workers. Hence the respondent No.2 is successor in interest of respondent No.1. Since the respondent No.2 has stepped into the shoes of respondent No.1 he cannot avoid his legal liability by raising technical pleas. Since the respondent No.2 has stepped in the shoes of respondent No.1 the relationship of employer-employee relationship is continued with respondent No.2. It is therefore prayed that application be rejected.

5. Heard both the parties at length. The respondents in support of its contention have relied upon following Judgments.

(i) Indian Seamless Metal Tubes Ltd. v/s Sunil Rambhau Iwale (2001 III CLR 728- Hon'ble Bombay High Court)

(ii) Quadricon Pvt. Ltd. v/s Maxi D'souza (2004 III CLR 530 – Hon'ble Bombay High Court)

(iii) Maharashtra General Kamgar Union v/s Royal Western India Turf Club Ltd. (2006 (2) Mh.L.J. 115- Hon'ble Bombay High Court)

(iv) Sarva Shramik Sangh v/s Janprabha Offset Works (2008 I LLJ 271- Hon'ble Bombay High Court)

6. The respondents have filed written statement in the matter at Ex.C-17 and Ex.C-13 respectively. On perusal of said written statement it can be seen that it is contended by the respondent that

there is no employer-employee relationship in existence between complainant and respondent No.2 and hence the complaint is not tenable and is liable to be dismissed on this count alone. Specifically the respondent No.2 has taken a stand that complaint cannot be proceeded against respondent No.2 as there is no employer-employee relationship and it is seriously disputed by respondent No.2.

7. *Per contra*, the complainant has contended in its complaint that he is the employee of respondent No.1 sugar factory and the said factory was taken on lease by respondent No.2 for running the same on lease basis of 10 years since 2017. It is contended that the respondent No.2 has continued the previous workers of respondent No.1 in the said factory with the same service conditions by virtue of tripartite agreement dt.04/07/2017 and hence the respondent No.2 has been made as a necessary party to the present proceeding.

8. So far as application taking preliminary objection is concerned it is prayed that the complaint against respondent No.2 be dismissed as there being no employer-employee relationship. The Judgments referred by the respondents are perused. In the Judgment of Hon'ble Bombay High Court in the case of *Sarva Shramik Sangh v/s Janprabha Offset Works Ltd.* (supra), the Hon'ble Division Bench has considered the law laid down in the case of *Vividh Kamgar Sabha v/s Kalyani Steel Ltd.(2001 (2) SCC 381), Indian Seamless Metal Tubes Ltd. Ahmednagar*

v/s Sunil Rambhau Iwale (2002 (4) LLJ (Suppl) 1220 (NOC)' Hindustan Coca Cola Bottling S/W Pvt. Ltd. v/s Bharatiya Kamgar Sena (2002 (1) LLJ 380- (Bom), Sarva Shramik Sangh v/s Indian Smelting and Refining Co. Ltd.(2003-10 SCC 455), Cipla Ltd. v/s Maharashtra General Kamgar Union (2001 – 3 – SCC 10), Indian Express Newspaper Employees Union v/s K.M. Desai (1991 I LLJ 70- Bom.). These Judgments are also referred to in other Judgements relied upon by the respondents. In the case of *Sarva Shramik Sangh v/s Janprabha Offfset Works Ltd. (supra)* the Hon'ble Bombay High Court has held that there is no jurisdiction available with the Industrial Court to investigate issue of employer-employee relationship and if the relationship is disputed such question cannot be enquired into by the Industrial Court under MRTU & PULP Act, 1971. It is settled principle of law laid down by the Hon'ble Supreme Court in the case of *Vividh Kamgar Sabha v/s Kalyani Steel Ltd. (2001 (2) SCC 381)* and *Cipla Ltd. v/s Maharashtra General Kamgar Union (2001 I CLR 754)* that if the employer-employee relationship is disputed or disputable, the complaint filed under MRTU & PULP Act, 1971 is not maintainable before the Labour Court or Industrial Court. In the background of law laid down in the aforesaid Judgment if pleadings taken in the present complaint are seen it is clear that the complainant do not claim direct relationship of employer-employee with the respondent No.2. He do not claim that he is direct employee of respondent No.2. It is his contention

that by virtue of tripartite agreement dt.04/07/2017 the respondent No.2 has taken the sugar factory for running it on lease basis for ten years and earlier employees working with respondent No.1 were continued on same service conditions. The complainant claims to have employed with respondent No.1 sugar factory since 1/04/1980 and have resigned since 21/12/2011. He is claiming unpaid wages since 2004 to 2005 and arrears of wages since September 2005 to September 2007. He has also claimed that despite doing duties for the period April 2009 to May 2010 the respondent has not paid his wages and also claiming bonus. It is claimed in the complaint that there is tripartite agreement between respondent No.1 and respondent No.2 and Sangli DCC Bank Ltd. executed on 04/07/2017. There are covenant about running the sugar factory and paying the outstanding legal dues of the workers and hence it is contended that respondent No.2 is necessary party in the present complaint.

9. The respondent No.1 and respondent No.2 are disputing relationship of employer-employee between complainant and the respondent No.2 in their written statement and accordingly application at Ex.C-8 came to be filed praying to dismiss the complaint against respondent No.2. As noted above the complainant is not claiming direct relationship of employer-employee with respondent No.2. On the contrary, the respondent No.1 and respondent No.2 have pleaded in their respective written statement about taking the

sugar factory on lease of 10 years. Hence there is no question of disputing or deciding employer-employee relationship between complainant and respondent No.2. No doubt the respondent No.2 can very well contend that he is not liable to pay any dues of complainant as he has taken the sugar factory from respondent No.1 on lease basis since July 2017 onwards. However, the said issue requires to be decided on merit finally after parties led their evidence. So also issue of limitation also can be considered and decided alongwith all other issues. Therefore, the complaint is not liable to be thrown out at the threshold as prayed by the respondent. It is required to be finally decided as to whether the complainant is able to prove that he is having some outstanding dues payable to him by respondent No.1 and then it is required to be seen who is liable to pay the said dues to the complainant. Therefore, it will be premature at this stage to hold that complaint is not maintainable as against respondent No.2. In order to support his contention the respondent No.2 has also not produced tripartite agreement dt.04/07/2017 or any other document therefore, it is not possible to see whether or not the terms and conditions of agreement dt.04/07/2017 imposes any responsibility upon the respondent No.2 with regard to payment of outstanding dues of the workers who either retired or resigned prior to agreement.

10. Hence considering the reasons recorded hereinabove with

great respect I find that Judgments relied upon by the respondents are not helpful for the respondents to contend that the complaint is liable to be dismissed. The facts involved in the said Judgments are different from the facts involved in the case in hand. Therefore, the application filed by respondent No.2 at Ex.C-8 is liable to be rejected. However, before parting with the order, it is made clear that all the points of merit of parties are kept open. In the result, I hold that application deserves to be rejected. Hence the following order.

Order

i) Application stands rejected.

ii) Dictated and pronounced in the Open Court.

Digambar Marutirao Patil
Digitally signed by Digambar Marutirao Patil
Date: 2022.05.13 15:38:33 +0530

Sangli. (D.M. Patil)
Member,
Date : 4th May 2022. Industrial Court Sangli