SARVA SHRAMIK SANGH

v.

M/S. INDIAN SMELTING AND REFINING CO. LTD. AND ORS.

OCTOBER 28, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

Labour Laws :

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971—Jurisdiction under—Scope of—Held, jurisdiction under the Act can be availed only after employer-employee relationship having been adjudicated upon under ID Act and not when such issue is in dispute—Industrial Disputes Act, 1947.

Interpretation of Statutes :

Legislative intent and meaning of statute—Ascertainment of—Held, has to be ascertained not only from the language but also from its nature, design and consequences.

Practice and Procedure :

Review of its previous judgments by Supreme Court—Scope of—Held: : Though the Court has inherent jurisdiction to revise its earlier decision, but the same should not be done only because alternate view pressed on subsequent occasion is more reasonable—Stare decisis.

In General Labour Union (Red Flag), Bombay **v.** *Ahmedabad Mfg. and Calico Printing Co. Ltd. and Ors.,* **[1995] Suppl. 1 SCC 175,** *Vividh Kamgar Sabha* **v.** *Kalyani Steels Ltd. and Anr,* **[2001] 2 SCC 381 and** *CIPLA Ltd.* **v.** *Maharashtra General Kamgar Union and Ors.,* **[2001] 3 SCC 101, it was held that before filing any complaint under Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (Maharashtra Act), workmen have to establish employer-employee relationship.**

In the present case appellants-workmen contended that the above

A decisions needed to be revised as various relevant provisions of the Maharashtra Act were not taken into consideration, that Maharashtra Act as well as Industrial Disputes Act, 1947 are co-extensive and remedies are available under both the above enactments at the option of the workmen, though not under both the Acts; that Sections 7, 28 B and 32 of Maharashtra Act cannot be construed to keep an adjudication regarding workmen and principal employer relationship out of the purview of the Maharashtra Act notwithstanding it being disputed; that in case of having more than one provision for governing a situation, the provisions have to be harmoniously construed; that the definition of 'workmen' was by logic of incorporation, and, therefore, C the Tribunal under the ID Act alone cannot be held competent to effectively decide the question of employer-employee relationship.

Respondents contended that when three different Benches of Supreme Court had consistently taken the view for over 10 years, the D same could not be interfered only on the ground that there may be scope for another possible view.

Dismissing the appeal, the Court

E HELD : 1.1. In order to entertain a complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, it has to be established that the claimant was an employee of the employer against whom complaint is made, under the Industrial Disputes Act, 1947. When there is no dispute about such relationship the Maharashtra Act would have full application. When that basic claim is F disputed obviously the issue has to be adjudicated by the forum which is competent to adjudicate. The *sine qua non* for application of the concept of unfair labour practice is the existence of a direct relationship of employer and employee. Until that basic question is decided the forum recedes to the background in the sense that first that question has to be got separately G adjudicated. Even if it is accepted for the sake of argument that two forums are available, the Court certainly can say which is the more appropriate froum to effectively get it adjudicated. Once the existence of contractor is accepted, it leads to an inevitable conclusion that a relationsip exists between the contractor and the complainant. It is the relationship existing H by contractual arrangement which is sought to be abandoned and negated

and in its place the complainant's claim is to the effect that there was in reality a relationship between the employer and the complainant directly. It is the establishment of the existence of such an arrangement which decides the jurisdiction. An industrial dispute has to be raised before the Tribunal under the ID Act to nave the issue relating to actual nature of employment sorted out. [1023-H, 1024-A-E]

1.2. Inferentially, from Sections 7, 28 and 32 of Maharashtra Act it is sought to be asserted that there is a statutory recognition in Section 59 as to the entitlement of a worker, at his option or choice to have recourse to anyone of the statutory remedies under the different Acts and therefore all and every question relating to the redress sought including as to whether a person is an 'employee' can also be decided by the Courts under the Maharashtra Act. This too general and wide assertion completely overlooks the stipulation made. "if any proceeding in respect of any matter falling within the purview of this Act is instituted" in the said provision. As to what matters fall within the purview of the Act is to be found outside Section 59 and there is no such indicator, in this regard in Section 59 itself. Section 59 of Maharashtra Act makes it clear that no proceeding under the Bombay Industrial Relations Act, 1946 or the ID Act shall be entertained when proceedings in respect of any matter falling within the purview of the Maharashtra Act is already instituted. A complaint in which relief is sought for a declaration of a status as a direct employee of the principal employer and other consequential reliefs in terms of benefits and conditions of service applicable to workers directly employed by the principal employer is not a matter which falls within the purview of the Maharashtra Act. Therefore, Section 59 has no application in such a case. That was, what has been specifically, elaborately and analytically found dealt with in *CIPLA's* case and mere non-mention of Section 59 in the judgment is no justification to say that they were either unaware of it or that a relevant and necessary provision which ought to have been considered has been overlooked, which if had been adverted to, the result would or ought to be different from the one taken, in that case. [1022-F-H, 1019-A-C, 1022-G-H, 1023-A]

1.3. The interpretation of the relevant provisions of the Maharashtra Act appears to be in tune with the legal sense of the words

A **construed in the context of the statute and the jurisdiction of the authorities constituted thereunder. Such a construction paves way for avoiding uncertainty as well as possible inconsistency or expression of contradictory views when more than one group chose to avail different forums for similar kind of relief and therefore could not be said to have**
B **resulted in serious injustice, hardship or anomaly to warrant the countenance of a different view. A careful, critical and analytical scrutiny of the various provisions which consciously and conspicuously use the words 'employee' and 'employer' in all the relevant provisions would postulate the pre-existing relationship of such employee and**
C **employer being an accepted/acceptable fact. Consequently, the question of ousting the jurisdiction of an assumed and unfound jurisdiction to be otherwise existing does not at all arise. [1023-C-E]**

1.4. The principles laid down in *CIPLA's* case are unexceptionable and well merited having regard to the scheme, purpose and object of the
D **legislations under consideration and legislative intent as expressed in the language of the various provisions therein and do not call for any reconsideration, merely because there was no reference to a particular provision or other, wherein all relevant principles and criteria necessary for the purpose have been found effectively kept into consideration. There**
E **is no scope for reconsidering the judgment, the view which really echoed the one taken about almost a decade back. [1024-D-F]**

Steel Authority of India Ltd. and Ors. **v.** *National Union Waterfront Workers and Ors.,* **[2001] 7 SCC 1, followed.**

F *General Labour Union (Red flag) Bombay* **v.** *Ahmedabad Mfg. and Calico Printing Co. Ltd. and Ors.,* **[1995] 1 SCC 175 and** *Vividh Kamgar Sabha* **v.** *Kalyani Steels Ltd. and Anr.,* **[2001] 2 SCC 381, referred to and reiterated.**

G *CIPLA Ltd* **v.** *Maharashtra General Kamgar Union and Ors.,* **[2001] 3 SCC 101, relied on.**

Rex **v.** *Basudev,* **(1950) FC 67;** *Canada Income War Tax R.S.C.,* **(1927) C. 97 S. 66;** *Nanalno Community Hotel,* **(1945) 3 D.L.R. 225,**
H **referred to.**

2. The meaning and intention of the legislature, which must govern the interpretation of a provision in a statute, have to be ascertained not only from the language in which it is clothed but also by considering its nature, its design and the consequences, which would follow in construing it either way. Reports of Commissions or Inquiry Committees proceeding the introduction of a Bill for the enactment have been always viewed as providing evidence of the historical facts or of surrounding circumstances or of mischief or evil intended to be remedied and at times even for interpreting the Act, as external aids to construction of the Act.

R.S. Nayak **v.** *A.R. Antulay,* **(1984) 2 SCC 183, followed.**

Mithilish Kumar **v.** *Prem Bihari Khare,* **AIR (1989) SC 1247and** *Shriram Chits and Investments (P.) Ltd.* **v.** *U.O.I.,* **AIR (1993) SC 2063, relied on.**

3. Though this Court has inherent jurisdiction to reconsider and revise its earlier decisions, it would at the same time be reluctant to entertain such pleas unless it is satisfied that there are compelling and substantial reasons to do so and not undertake such an exercise merely for the asking or that the alternate view pressed on the subsequent occasion is more reasonable.

Keshav Mills Ltd. **v.** *Commissioner of Income Tax,* **[1965] 2 SCR 908, followed.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8452 of 2003.

From the Judgment and Order dated 7.11.2001 of the Industrial Court Maharashtra at Mumbai in Complaint (ULP) No. 835 of 2000.

WITH

C.A. Nos. 8453, 8454-59, 8460, 8461, 8462, 8463 of 2003.

Ms. Indira Jaising, Chander Udai Singh, V.A. Mohta, P.P. Rao, Shekhar Naphade, Bhimrao Naik, Dushyant Dave, Ms. Sangeet Panicker,

A R.K. Kumar, Bharat Sangal, Gopal Jain, Sanjay Singhvi, Mahesh Agarwal, Ms. Jane Cox, F.C. Agrawala, Ms. Aparna Bhat, P. Ramesh Kumar, Vipin M. Benjamin, Nitin S. Tambwekar, C. Ravichandran Iyer, Ms. Purnima Bhat, Shivaji M. Jadhav, G. Balaji, A Sumanth, J.S. Balliya, Ms. Praveena Gautam, Pramod B. Aggarwala, P.N. Anaokar, K.P. Krishnan Nair, P. B Venugopal, P.S. Sudheer, Ms. Anuradha Rastogi, S.V. Deshpande, Prabhijit Jauhar, R.N. Shah, S.S. Jauhar, D.J. Bhanage and Ms. Meenakshi Arora for the appearing parties.

The Judgment of the Court was delivered by

C **ARIJIT PASAYAT, J :** Leave granted.

Appellants contend that the view which was first expressed by this Court in *General Labour Union (Red flag), Bombay* v. *Ahmedabad Mfg. And Calico Printing Co. Ltd and Ors.*, [1995] Supp 1 SCC 175, subsequently D echoed in many cases including *Vividh Kamgar Sabha* v. *Kalyani Steels Ltd. and Anr.*, [2001] 2 SCC 381 and finally in *CIPLA Ltd.* v. *Maharashtra General Kamgar Union and Ors.*, [2001] 3 SCC 101 is legally unsound and needs a fresh look.

E It was held in first of the three cases that the workmen have to establish that they are workmen of the respondent-company before they can file any complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (in short the 'Maharashtra Act'). Similar was the view expressed in *Vividh Kamgar's* case (supra) and *CIPLA Ltd.'s* case (supra).

According to the appellants a fresh look is necessary in the matter, as various relevant provisions were not kept in view when the above decisions were rendered.

G Ms. Indira Jaisingh, made leading submissions followed by Shri V.A. Mohta, Mr. Chander Udai Singh, Sr. Advocates and others on behalf of the appellants, whereas Shri P.P. Rao. learned Senior Counsel followed by Sarvashri D.A. Dave, B.R. Naik and Shekhar Naphade, Sr. Advocates and others responded on behalf of the respondents. On behalf of the appellants-H workmen, relying upon Section 59 of the Maharashtra Act, it was urged

strenuously that the machinery under the said Act as well as Industrial Disputes Act, 1947 (in short the 'ID Act') are co-extensive and equally wide and the scope of judicial determination under both the Acts is the same and that therefore there was no warrant to assume that the procedure envisaged under the Maharashtra Act is summary. While pursuing further the said stand it is claimed that in cases where the workmen seek to obtain a declaration that they were at all times the workmen of the principal employer and the interposition of contractor or engagement through him was neither *bona fide* nor genuine but merely a camouflage designed to defeat the rights of the labourers remedies are available under both the above enactments to be availed of at the option and choice of the workman concerned under anyone or other, though not under both. It was also contended that Section 7 or Section 28 and 32 of the Maharashtra Act cannot be construed so as to keep out of the purview of the Act, even an adjudication as to the existence of relationship of the workmen *vis-à-vis* the principal employer not withstanding that it is disputed or denied by the principal employer and being a beneficial legislation meant to provide workmen a more beneficial and expeditious additional remedy a liberal construction has to be placed in furtherance of the avowed object. Further, it is contended that when more than one statute governed the situation the provisions have to be harmoniously construed, giving each of them a full play rationally without whittling down the scope of anyone of them, keeping in view the basic principle that where there is no express bar to a jurisdiction, ouster of jurisdiction could not be lightly inferred, to avoid rendering provisions in a statute otiose or redundant. Most rational way of such an harmonious construction would therefore, according to the appellants lead to the ultimate conclusions a) of questions relating to abolition of contracts and consequential absorption can be raised before Industrial Courts, though by virtue of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the 'Contract Labour Act') the question relating to abolition will be decided only by the Government and the Industrial Forums will keep the matter pending, to finally dispose of the other issues after the decision of Government under the said Act and b) the dispute relating to the sham nature of the employment through contractor can be raised under the Maharashtra Act or ID Act at the option or choice of the workmen. The expression 'enquiry' as appearing under the Maharashtra Act is said to go far beyond the 'adjudication' contemplated in Industrial Law and therefore convey wider powers and jurisdiction.

A It was submitted that the Maharashtra Act is a complete code in itself. If the forum provided therein can co-exist with the Tribunal under the ID Act, it is essentially an alternative forum with additional remedies. Definition of "workman" was by the logic of incorporation and, therefore, the Tribunal under the ID Act alone can not held competent to effectively B decide the question whether the claimant in reality was a workman or not. It was also submitted that this Court erroneously proceeded on the footing as if the proceedings under the Maharashtra Act are summary in nature.

C Per contra, on behalf of the respondents-Management/establishments, it was contended that when three different Benches of this Court have consistently taken the view that the basic question as to existence of relationship of employer-employee is not within the purview of the Maharashtra Act and the same hold the field for over 10 years it would require very strong reasons for any one to doubt the correctness of such D a view and that the mere reason that there may even be scope for another possible view, is no ground for reconsideration of the earlier decisions as held by this Court in *Keshav Mills Ltd.* v. *Commissioner of Income Tax* [1965] 2 SCR 908 at pages 921, 928.

E On the merits of the contentions raised on behalf of the appellants while reiterating the plea that the principles laid down in *CIPLA's* case (supra) are unexceptionable and well merited having regard to the scheme, purpose and object of the legislations under consideration and legislative intent as expressed in the language of the various provisions therein and do not call for any reconsideration, merely because there was no reference F to a particular provision or other, wherein according to the respondents all relevant principles and criteria necessary for the purpose have been found effectively kept into consideration. According to the respondents the scope for the Maharashtra Act is limited in nature and confined to consideration of claims and grievances of unfair labour practices of certain kind by G prohibiting employer or union and employees from engaging in any unfair labour practice and the existence of an undisputed or indisputable relationship of employer-employee is an essential pre-requisite for the labour or Industrial Court under the Maharashtra Act to entertain any proceedings in respect of any grievance under the said Act. Section 32 of the H Maharashtra Act, it is urged is to be considered in the context of Sections

26 and 27 read with the relevant entries in the Schedules in these cases, particularly items 5, 6, 9 & 10 and in the absence of accepted or existing relationship of employer-employee duly declared in competent proceedings, neither Section 5 nor Section 7 or even Section 28 enabled a complaint to be entertained for consideration of such grievances as are sought or permitted to be agitated under the Maharashtra Act.

The further plea on behalf of the respondents was that the scope of adjudication under the ID Act is much wider in which all or any types and nature of industrial disputes including claims for declaration of status or relationship of "Master and Servant or Employer and Employee" can also be agitated and determined and not under the Maharashtra Act. Consequently, it is claimed that questions as to whether the contract under which contract labour was engaged was a sham and nominal or a mere camouflage and if so whether by piercing the veil they should be declared to be really the employees of the principal employer are matters which could be got referred to for adjudication by seeking a reference under ID Act only and are totally outside the jurisdiction of the Courts constituted under the Maharashtra Act.

The decision of the Constitution Bench in *Steel Authority of India Ltd. and Ors.* v. *National Union Waterfront Workers and Ors.*, [2001] 7 SCC 1 in several paragraphs particularly paras 65, 108, 112, 113, 117, 125 makes the position clear that a dispute of the nature previously projected has perforce to be adjudicated on the issue as to whether a person was a workman under the employer.

The relevant paragraphs so far as relevant read as follows:

> "65. The contentions of the learned counsel for the parties, exhaustively set out above, can conveniently be dealt with under the following two issues :
>
> A. Whether the concept of automatic absorption of contract labour in the establishment of the principal employer on issuance of the abolition notification, is implied in Section 10 of the CLRA Act; and
>
> B. Whether on a contractor engaging contract labour in connection

A with the work entrusted to him by a principal employer, the relationship of master and servant between him (the Principal employer) and the contract labour, emerges.

108. The next issue that remains to be dealt with is :

B

B. Whether on a contractor engaging contract labour in connection with the work entrusted to him by a principal employer, the relationship of master and servant between him (the principal employer) and the contract labour emerges.

C

112. The decision of the Constitution Bench of this Court in *Basti Sugar Mill's* case (supra), was given in the context of reference of an industrial dispute under the Uttar Pradesh Industrial Disputes Act, 1947. The appellant-Sugar Mills entrusted the work of removal of press-mud to a contractor who engaged the respondents

D therein (contract labour) in connection with that work. The services of the respondents were terminated by the contractor and they claimed that they should be reinstated in the service of the appellant. The Constitution Bench held :

E

> "The words of the definition of workmen in Section 2(z) to mean "any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express

F or implied" are by themselves sufficiently wide to bring in persons doing work in an industry whether the employment was by the management or by the contractor of the management. Unless however the definition of the word "employer" included the management of the industry even when the employment

G was by the contractor the workmen employed by the contractor could not get the benefit of the Act since a dispute between them and the management would not be an industrial dispute between "employer" and workmen. It was with a view to remove this difficulty

H in the way of workmen employed by contractors that

the definition of employer has been extended by sub-clause (iv) of Section 2(i). The position thus is : (a) that the respondents are workmen within the meaning of Section 2(z), being persons employed in the industry to do manual work for reward, and (b) they were employed by a contractor with whom the appellant company had contracted in the course of conducting the industry for the execution by the said contractor of the work of removal of press-mud which is ordinarily a part of the industry. It follows therefore from Section 2(z) read with sub-clause (iv) of Section 2(i) of the Act that they are workmen of the appellant company and the appellant company is their employer."

113. It is evident that the decision in that case also turned on the wide language of statutory definitions of the terms "workmen" and "employer". So it does not advance the case pleaded by the learned counsel.

117. We find no substance in the next submission of Mr. Shanti Bhushan that a combined reading of the definition of the terms contract labour, establishment and workman would show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship.

125(5). On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be

A treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder."

B In view of the rival submissions it would be appropriate to take note of the conclusions arrived at by this Court earlier. First at point of time is the *General Labour Union's* case (supra). This Court, *inter alia*, observed as follows:

"The workmen have first to establish that they are the C workmen of the respondent-company before they can file any complaint under the Act. Admittedly, this has not been done. It is open for the workmen to raise an appropriate industrial dispute in that behalf if they are entitled to do so before they resort to the provisions of the present Act".

D In *V. Kamgar's* case (supra) it was, *inter alia*, observed as follows:

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

F The provisions of the MRTU and 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 G complaint could be made under the provisions of the MRTU and PULP Act.

Then comes the last of the cases i.e. *CILPA's* case (supra) where detailed analysis have been made of the legal position. In paras 8 and 9 H and 10 it was observed as under:

"8. But one thing is clear – if the employees are working under a contract covered by the Contract Labour (Regulation and Abolition) Act then it is clear that the Labour Court or the industrial adjudicating authorities cannot have any jurisdiction to deal with the matter as it falls within the province of an appropriate Government to abolish the same. If the case put forth by the workmen is that they have been directly employed by the appellant company but the contract itself is a camouflage and, therefore, needs to be adjudicated is a matter which can be gone into by appropriate Industrial or Labour Court. Such question cannot be examined by the Labour Court or the Industrial Court constituted under the Act. The object of the enactment is, amongst other aspects, enforcing provisions relating to unfair labour practices. If that is so, unless it is undisputed or indisputable that there is employer-employee relationship between the parties, the question of unfair practice cannot be inquired into at all. The respondent Union came to the Labour Court with a complaint that the workmen are engaged by the appellant through the contractor and though that is ostensible relationship the true relationship is one of master and servant between the appellant and the workmen in question. By this process, workmen repudiated their relationship with the contractor under whom they are employed but claim relationship of an employee under the appellant. That exercise of repudiation of the contract with one and establishment of a legal relationship with another can be done only in a regular Industrial Tribunal/Court under the ID Act.

9. Shri K.K. Singhvi, the learned Senior Advocate appearing for the respondent, submitted that under Section 32 of the Act the Labour Court has the power to "decide all matters arising out of any application or complaint referred to it for decision under any of the provisions of the Act." Section 32 would not enlarge the jurisdiction of the court beyond what is conferred upon it by other provisions of the Act. If under other provisions of the Act the Industrial or the Labour Court has no jurisdiction to deal with a particular aspect of the matter, Section 32 does not give such power to it. In the cases at hand before us, whether the workman can be stated to be the workman of the appellant establishment

A or not, it must be held that the contract between the appellant and the second respondent is a camouflage or bogus and upon such a decision it can be held that the workman in question is an employee of the appellant establishment. That exercise, we are afraid, would not fall within the scope of either Section 28 or
B Section 7 of the Act. In cases of this nature where the provisions of the Act are summary in nature and give drastic remedies to the parties concerned elaborate consideration of the question as to relationship of employer-employee cannot be gone into. If at any time the employee concerned was indisputably an employee of the establishment and subsequently it is so disputed, such a question
C is an incidental question arising under Section 32 of the Act. Even the case pleaded by the respondent Union itself is that the appellant establishment had never recognized the workmen mentioned in Exhibit 'A' as its employees and throughout treated these persons as the employees of the second respondent. If that
D dispute existed throughout, we think, the Labour Court or the Industrial Court under the Act is not the appropriate court to decide such question, as held by this Court in *General Labour Union (Red Flag)* v. *Ahmedabad Mfg. & Calico Printing Co. Ltd.*, [1995] Supp 1 SCC 175, which view was reiterated by us in *Vividh*
E *Kamgar Sabha* v. *Kalyani Steels Ltd.*, [2001] 2 SCC 381.

10. However, Shri Singhvi very strenuously contended, by adverting to the scope of the Payment of Wages Act, 1936 and the scope of Section 33-C(2) of the Industrial Disputed Act, that
F these questions can be gone into by the courts and, in this context, he relied upon the decision of the High Court of Bombay in *Vishwanath Tukaram* v. *G.M. Centeral Rly., V.T.* In determining whether the wages had been appropriately paid or not, the authority under the Payment of Wages Act was held to have jurisdiction to decide the incidental question of whether the
G applicant was in the employment of the railway administration during the relevant period. It means that at one time or the other the employee concerned was indisputably in employment and later on he was found to be not so employed and in those circumstances, the court stated that it was an incidental question
H to be considered."

Reference has also been made to Sections 27, 28, 29 (d) and 32 of the Maharashtra Act. While Section 27 deals with prohibition on engaging in unfair labour practices, Section 28 empowers filing of a complaint. Any union or an employee or an employer or any investigating agency has the locus to file a complaint. Section 29 (d) categorises parties on whom order of Court is binding. Great emphasis was laid on Section 32 of the Maharashtra Act by the appellant to contend that matters connected with the dispute can be gone into under the provision. The expression "all matters arising out of" clearly emphasizes that it has connections, and not that it is the basic issue. There is a gulf of difference between a basic issue and something connected with or arising of the application. In *Rex* v. *Basudev* (1950 FC 67), it was observed that the connection contemplated must be real and proximate not far fetched or problematical. By no logic it can be a substitute of the other. "In connection with any assessment" (Canada: *Income War Tax Act R.S.C.* 1927 (C.97)S.66) has been interpreted as "*having to do with*" in Re *Nanaino Community Hotel* (1945) 3 D.L.R. 225. The basic question which was raised also in *CIPLA's* case (supra) relates to the existence of the relationship, and of any dispute connected with that. For getting protection under the Maharashtra Act, it has first to be established that the complainant is an employee of a person under whom he claims to be an employee, and against whom he files a complaint. In other words, the determinative question is can anybody who is not an 'employee' of or under a person against whom a grievance is sought to be made file a complaint under the Act and the answer is inevitably 'No'. The fundamental issue therefore is whether the complainant is an employee of the person against whom a complaint is made under the Maharashtra Act and if there is a dispute, he has to establish it, first before the appropriate forum designated for adjudication of such industrial disputes. Section 32 does not aid the appellant in the sense that it is not a matter arising out of the application, when the pre-existing relationship of employer-employee is a must and an essential pre-requisite. It is the core issue on which only the very locus to make a complaint can at all be claimed. A person who does not answer the description has no legal locus to file a complaint. A jurisdictional fact is one on the existence or otherwise of which depends assumption or refusal to assume jurisdiction by a court, tribunal or the authority. Said fact has to be established and its existence proved before a Court under the Maharashtra Act can assume jurisdiction of a particular case. If the complaint is made *prima facie* accepting

A existence of the contractor in such a case what has to be first established is whether the arrangement or agreement between the complainant and the contractor is sham or bogus. There is an inherent admission in such a situation that patently the arrangement is between the complainant and the contractor and the claim for a new and different relationship itself is a B disputed fact. To put it differently, the complainant seeks for a declaration that such arrangement is not a real one but something which is a façade. There is no direct agreement between the complainant and the principal employer and one such is sought to be claimed but not substantiated in accordance with law. The relief in a sense relates to a legal assumption that the hidden agreement or arrangement has to be surfaced. Entries 5, 6, 9 C and 10 of Schedule IV of Maharashtra Act read as follows:

> "5- To show favouritism or partiality to one set of workers, regardless of merits.
>
> D 6. To employ employees as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees.
>
> 9. Failure to implement award, settlement or agreement.
>
> E 10. To indulge in act of force or violence".

The ID Act is undisputedly a comprehensive statute which provides for investigation and settlement of industrial disputes. The term 'industrial dispute' as defined in Section 2(k) is of a wide amplitude and can F encompass the nature of dispute raised by the complainant. The Contract Labour Act is also a self-contained legislation aiming at regulations and abolition of contract labour. What is conferred under Section 18 of the said Act is to be exercised having regard to the relevant factors which are mentioned in clauses (a) to (d) of sub-section (2) thereof. It is significant that both the ID Act and the Contract Labour Act were in existence and G operation when the Maharashtra Act was enacted. The method of availing benefit of the Contract Labour Act is indicated in *Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat* v. *Hind Mazdoor Sabha and Ors.*, [1995] 5 SCC 27 where it was specifically held by this Court that the status of erstwhile contract labourers can only effectively be determined H under the ID Act.

As noted above, considerable emphasis was laid on the fact that Section 59 of the Maharashtra Act was not noticed in *CIPLA's* judgment. A bare reading of the said provision makes it clear that no proceeding under the Bombay Industrial Relations Act, 1946 or the ID Act shall be entertained when proceedings in respect of any matter falling within the purview of the Maharashtra Act is already instituted. A complaint in which relief is sought for a declaration of a status as a direct employee of the principal employer and other consequential reliefs in terms of benefits and conditions of service applicable to workers directly employed by the principal employer is not a matter which falls within the purview of the Maharashtra Act. Therefore, Section 59 has no application in such a case. Under the Maharashtra Act the Designated Court decides the complaint as provided under Sections 5 and 7 of the said Act. For the purpose of deciding the complaint enquiry under Section 30(3) of the said Act read with Section 28 is contemplated. The power to decide the complaint revolves round the question whether ingredients for constituting unfair labour practice exist or not. However, the power of adjudication under the ID Act is not circumscribed by the existence or non-existence of unfair labour practice and goes far beyond it.

The meaning and intention of the legislature, which must govern the interpretation of a provision in a statute, have to be ascertained not only from the language in which it is clothed but also by considering its nature, its design and the consequences, which would follow in construing it either way. Reports of Commissions or Inquiry Committees preceding the introduction of a Bill for the enactment have been always viewed as providing evidence of the historical facts or of surrounding circumstances or of mischief or evil intended to be remedied and at times even for interpreting the Act, as external aids to construction of the Act (vide *R.S. Nayak* v. *A.R. Antulay,* [1984] 2 SCC 183 @ 214 and *Mithilish Kumar* v. *Prem Bihari Khare,* [1989] SC 1247 @ 1252 and *Shriram Chits & Investments (P) Ltd.* v. *U.O.I.,* [1993] SC 2063 @ 2066, 2080. The report of the Committee on unfair labour practices which preceded the Maharashtra Act, while noticing the fact that the expression 'unfair labour practices' was being used in all fields and areas connected with industrial relations in a wider sense and loosely worded manner and not always to mean certain activities connected with collective bargaining, sought to enumerate the types of such practices as were illustrated during course of enquiries by

A the employees and their organizations, unions and also individual workers or groups of individual workers and specifically states that "after a careful scrutiny, we have selected only a few of them because we are of the view that the net of unfair labour practices should not be cast too wide." As the preamble to the Maharashtra Act would recite, the State Legislature B after taking into consideration the report of the Committee, thought fit to decide among other things to define and provide for the prevention of certain unfair labour practices and to constitute courts for carrying out the purposes of according recognition to trade unions and for enforcing in that context the provisions relating to unfair practices. The fact that there were in existence and force, at that point of time several related laws such as C ID Act, Contract Labour Act, Bombay Industrial Relations Act, etc. and the provisions of the Maharashtra Act was not to be in derogation of those laws cannot also be overlooked in trying to understand and interpret the provisions in question, and the issue now the subject matter of these appeals.

D

As pointed out supra the main grievance voiced is about the so-called omission to specifically notice Section 59 while rendering the decision in *Ciplas* case (supra). Section 59 reads as follows:

E

> "*59. Bar of proceeding under Bombay or Central Act:-* If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or, as the case may be, the Bombay Act; and if any proceeding in respect of any matter within the purview F of this Act is instituted under the Central Act, or as the case may be, the Bombay Act, then no proceedings shall at any time be entertained by the Industrial or Labour Court under this Act."

Section 7 reads as follows:

G

> *"7. Duties of Labour Court:-* It shall be the duty of the Labour Court to decide complains relating to unfair labour practices described in item 1 of Schedule IV and to try offences punishable under this Act."

H Section 28 reads thus:

"*28. Procedure for dealing with complaints relating to unfair labour practices:*- (1) Where any person has engaged in or is engaging in any unfair labour practice, then any union or any employee or any employer or any Investigating Officer may, within ninety days of the occurrence of such unfair labour practice, file a complaint before the Court competent to deal with such complaint either under section 5, or as the case may be, under section 7, of this Act:

Provided that, the Court may entertain a complaint after the period of ninety days from the date of the alleged occurrence, if good and sufficient reasons are shown by the complainant for the late filing of the complaint.

(2) The Court shall take a decision on every such complaint as far as possible within a period of six months from the date of receipt of the complaint.

(3) On receipt of a complaint under sub-section (1), the Court may, if it so considers necessary, first cause an investigation into the said complaint to be made by the Investigating Officer, and direct that a report in the matter may be submitted by him to the Court, within the period specified in this direction.

(4) While investigating into any such complaint, the Investigating Officer may visit the undertaking, where the practice alleged is said to have occurred, and make such enquiries as he considers necessary. He may also make efforts to promote settlement of the complaint.

(5) The Investigating Officer shall, after investigating into the complaint under sub-section (4) submit his report to the Court, within the time specified by it, setting out the full facts and circumstances of the case, and the efforts made by him in setting the complaint. The Court shall, on demand and on payment of such fee as may be prescribed by rules, supply a copy of the report to the complainant and the person complained against.

(6) If, on receipt of the report of the Investigating Officer, the

A Court finds that the complaint has not been settled satisfactorily, and that facts and circumstances of the case require, that the matter should be further considered by it, the Court shall proceed to consider it, and give its decision.

B (7) The decision of the Court, which shall be in writing, shall be in the form of an order. The order of the Court shall be final and shall not be called in question in any civil or criminal court.

(8) The Court shall cause its order to be published in such manner as may be prescribed. The order of the Court shall become C enforceable from the date specified in the order.

(9) The Court shall forward a copy of its order to the State Government and such officers of the State Government as may be prescribed."

D Section 32 reads as hereunder:

"32. *Power of Court to decide all connected matters:-* Notwithstanding anything contained in this Act, the Court shall have the power to decide all matters arising out of any application E or a complaint referred to it for the decision under any of the provisions of this Act. "

Inferentially, from the above it is sought to be asserted that there is a statutory recognition in Section 59 as to the entitlement of a worker, at F his option or choice to have recourse to anyone of the statutory remedies under the different Acts and therefore all and every question relating to the redress sought including as to whether a person is an 'employee' can also be decided by the Courts under the Maharashtra Act. This too general and wide assertion completely overlooks the stipulation made, "If any proceeding in respect of any matter falling within the purview of this Act G is instituted" in the said provision. As to what matters fall within the purview of the Act is to be found outside Section 59 and there is no such indicator, in this regard in Section 59 itself. That was, what has been specifically, elaborately and analytically found dealt with in *CIPLA's* case (supra) by the learned Judges and mere non-mention of Section 59 in the H judgment is no justification to contend that they were either unaware of

it or that a relevant and necessary provision which ought to have been considered has been overlooked, which if had been adverted to the result would or ought to be different from the one taken, in that case. We have carefully gone through the construction placed upon the statutory provisions noticed and conclusions drawn as to the class or category of matters which only would fall within the purview of the Maharashtra Act and the necessity for any complainant to answer the description, as a condition precedent, to be or having been treated by the employer as his 'employee' and the relationship of employee and employer with the employer against whom any such complaint of unfair labour practice is made and relief therefor is sought is beyond controversy and common case or accepted position and that we are in respectful agree with the same. The interpretation of the relevant provisions of the Maharashtra Act appears to be in tune with the legal sense of the words construed in the context of the statute and the jurisdiction of the authorities constituted thereunder. Such a construction paves way for avoiding uncertainty as well as possible inconsistency or expression of contradictory views when more than one group chose to avail different forums for similar kind of relief and therefore could not be said to have resulted in serious injustice, hardship or anomaly to warrant the countenance of a different view. A careful, critical and analytical scrutiny of the various provisions which consciously and conspicuously use the words 'employee' and 'employer' in all the relevant provisions would postulate the pre-existing relationship of such employee and employer being an accepted/acceptable fact. Consequently, the question of ousting the jurisdiction of an assumed and unfound jurisdiction to be otherwise existing, does not at all arise.

The common thread passing through all these judgments is that the threshold question to be decided is whether the industrial dispute could be raised for abolition of the contract labour system in view of the provisions of the Maharashtra Act. What happens to an employee engaged by the contractor if the contract made is abolished is not really involved in the dispute. There can be no quarrel with the proposition as contended by the appellants that the jurisdiction to decide a matter would essentially depend upon pleadings in the plaint. But in a case like the present one, where the fundamental fact decides the jurisdiction to entertain the complaint itself the position would be slightly different. In order to entertain a complaint under the Maharashtra Act it has to be established that the claimant was

A an employee of the employer against whom complaint is made, under the ID Act. When there is no dispute about such relationship, as noted in paragraph 9 of *CIPLA's* case (supra) the Maharashtra Act would have full application. When that basic claim is disputed obviously the issue has to be adjudicated by the forum which is competent to adjudicate. The *sine* B *qua non* for application of the concept of unfair labour practice is the existence of a direct relationship of employer and employee. Until that basic question is decided the forum recedes to the background in the sense that first that question has to be got separately adjudicated. Even if it is accepted for the sake of arguments that two forums are available, the Court certainly can say which is the more appropriate forum to effectively get C it adjudicated and that is what has been precisely said in the three decisions. Once the existence of contractor is accepted, it leads to an inevitable conclusion that a relationship exists between the contractor and the complainant. According to them, the contract was a façade and sham one which has no real effectiveness. As rightly observed in *CIPLA's* case D (supra), it is the relationship existing by contractual arrangement which is sought to be abandoned and negated and in its place the complainant's claim is to the effect that there was in reality a relationship between the employer and the complainant directly. It is the establishment of the existence of such an arrangement which decides the jurisdiction. That E being the position, *CIPLA's* case (supra) rightly held that an industrial dispute has to be raised before the Tribunal under the ID Act to have the issue relating to actual nature of employment sort out. That being the position, we find that there is no scope for re-considering *CIPLA's* case (supra), the view which really echoed the one taken about almost a decade back. F

That apart, as held by a seven member Constitution Bench judgment of this Court in *Keshav Mills's* case (supra), though this Court has inherent jurisdiction to reconsider and revise its earlier decisions, it would at the same time be reluctant to entertain such pleas unless it is satisfied that there G are compelling and substantial reasons to do so and not undertake such an exercise merely for the asking or that the alternate view pressed on the subsequent occasion is more reasonable. For the reasons stated supra, we are of the view that the decision in *CIPLA's* case (supra) was taken not only in tune with the earlier decisions of this Court in *General Labour* H *Union (Red Flag) Bombay's* case (supra) and *Vividh Kamgar Sabha's* case

(supra) but quite in accordance with the subject of the enactment and the object which the legislature had in view and the purpose sought to be achieved by the Maharashtra Act and consequently, there is no scope or necessity to reconsider the question once over again by a larger Bench. A

That being the position, these appeals are without merit and deserve dismissal. Costs made easy. B

K.K.T. Appeals dismissed.