

RAYMOND LTD. & ANOTHER

v.

TUKARAM TANAJI MANDHARE & ANOTHER
(Civil Appeal No. 5077 of 2006)

MARCH 09, 2011

[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 – s.3(5) and s.28 r/w items 1(a), (b), (d) and (f) of Schedule IV – Complaint before Industrial Court/ Labour Court – Maintainability of – Disputed employee-employer relationship – Three questions referred to High Court – 1) Whether a person who is employed by a contractor who undertakes contracts for the execution of the whole of the work or any part of the work which is ordinarily work of the undertaking is an employee within the meaning of s.3(5) of the MRTU and PULP Act; 2) Whether a complaint filed under the MRTU and PULP Act by an employee as defined under s.3(13) of the BIR Act, is maintainable although no direct relationship of employer employee exists between him and the principal employer and 3) Whether a complaint filed under the MRTU and PULP Act by employees under s.3(13) of the BIR Act can be dismissed if the employer claims that they are not his direct employees but are employed through a contractor – High Court answered question numbers 1 and 2 in the affirmative, and question number 3 in the negative provided the contractors' workmen were employed to do the work of the whole or part of the undertaking – On appeal, held: In view of the difference of opinion in some of the cited decisions and the importance of the controversy involved and its application particularly in the State of Maharashtra, an authoritative decision is required by a larger bench on the aforesaid questions – Matter, therefore, referred to larger bench – Bombay Industrial Relations Act, 1946 – s.3(13).

- A Three questions were referred to the High Court, namely, 1) Whether a person who is employed by a contractor who undertakes contracts for the execution of the whole of the work or any part of the work which is ordinarily work of the undertaking is an employee within the meaning of section 3(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU and PULP Act); 2) Whether a complaint filed under the MRTU and PULP Act by an employee as defined under section 3(13) of the Bombay Industrial Relations Act, is maintainable although no direct relationship of employer employee exists between him and the principal employer and 3) Whether a complaint filed under the MRTU and PULP Act by employees under section 3(13) of the BIR Act can be dismissed if the employer claims that they are not his direct employees but are employed through a contractor.

E The High Court answered the question numbers 1 and 2 in the affirmative, and question number 3 in the negative provided the contractors workmen were employed to do the work of the whole or part of the undertaking. This decision was challenged in the instant appeal.

Referring the matter to larger bench, the Court

- F HELD: A large numbers of decisions were cited before this Court. In view of the difference of opinion in some of these decisions and the importance of the controversy involved and its application particularly in the State of Maharashtra, an authoritative decision is required by a larger bench on the issues involved. Hence, the matter is referred to a larger bench on the issues referred to above. [Paras 9, 10, 11] [759-C-F-G]

H *Vividh Kamgar Sabha vs. Kalyani Steel Ltd, (2001) 2*

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SCC 381; *Cipla Ltd. vs. Maharashtra General Kamgar Union*, (2001) 3 SCC 101; *Sarva Shramik Sangh vs. Indian Smelting and Refining Co Ltd*, (2003) 10 SCC 455; *Dattatraya Kashinath and others vs. Chhatrapati Sahakari Sakhar Karkhana Ltd and others*, 1996 II LLJ 169 and *Sakhar Kamgar Union vs. Shri Chhatrapati Rajaram Sahakari Sakhar Karkhana Ltd and others*, 1996 II CLR 67; *Nagraj Gowda and others vs. Tata Hydro Electric Power Supply Co Ltd, Bombay and others*, 2003 III CLR 358 ; *Hindustan Coca Cola Bottling Pvt Ltd. vs. Bharatiya Kamgar Sena*, 2001 III CLR 1025 ; *Vividha Kamgar Sabha vs. Kalyani Steel Ltd. & another* (2001) 2 SCC 381, *Cipla vs. MGK Union* (2001) 3 SCC 101, *Sarva Shramik Sangh vs. Indian Smelting & Refining Company Limited* (2003) 10 SCC 455, *M/s Hindustan Lever Limited vs. Ashok Vishnu Kate* (1995) 6 SCC 326, *NTPC vs. Badri Singh Thakur and others*. (2008) 9 SCC 377, *Hindalco Industries vs. Association of Engineering Workers* (2008) 13 SCC 441, *Ahmadabad Mfg. and Calico Ptg. Co. Ltd. vs. Ram Tehel Ramnand* (1972) 1 SCC 898, *Saraspur Mill Co. Ltd. vs. Ramanlal Chimanlal* (1974) 3 SCC 66, *Shramik Uttakarsh Sabha vs. Raymond Woolen Mills Ltd. & others*, (1995) 3 SCC 78 – referred to.

Case Law Reference:

(2001) 2 SCC 381	referred to	Paras 3, 9	A
(2001) 3 SCC 101	referred to	Paras 3, 9	B
(2003) 10 SCC 455	referred to	Paras 4, 9	C
1996 II LLJ 169	referred to	Para 5	D
1996 II CLR 67	referred to	Para 5	E
2003 III CLR 358	referred to	Para 5	F
2001 III CLR 1025	referred to	Para 5	G
(1995) 6 SCC 326	referred to	Para 9	H

- A (2008) 9 SCC 377 referred to Para 9
(2008) 13 SCC 441 referred to Para 9
(1972) 1 SCC 898 referred to Para 9
B (1974) 3 SCC 66 referred to Para 9
(1995) 3 SCC 78 referred to Para 9

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5077 of 2006.

- C From the Judgment & Order dated 6.6.2005 of the High Court of Judicature at Bombay in Writ Petition No. 1204, 7673 & 9449 of 2003.

- D R.F. Nariman, Meena Doshi, Jayashree Wad, Ashish Wad, Tamali Wad, Sameer Abhyankar, Dipti (for J.S. Wad & Co.) for the Appellants.

Vinay Navare, Yogendra Pendse (for Naresh Kumar) for the Respondents.

- E The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. This appeal has been filed against the impugned judgment of the Full Bench of the High Court of Judicature at Bombay in Writ Petition Nos. Nos. 1204/2003, 7673/2003 and 9449/2003.

F 2. Heard learned counsel for the parties.

G 3. The facts of the case are that the petitioners filed complaints under section 28 read with items I (a)(b), (d) and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the MRTU and PULP Act), before the Industrial Court/Labour Court for certain reliefs claiming that they are employees of the respondent company. The respondent company in all these writ petitions has disputed the

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status of the employees and has contended in its written statement that there is no relationship of employer employee with any of the petitioners. The company has contended that the complainants were employed through the contractors and that the issue regarding maintainability of the complaints would have to be decided by the court. During the pendency of these complaints, the judgments in the case of *Vividh Kamgar Sabha vs. Kalyani Steel Ltd*, (2001) 2 SCC 381 and in the case of *Cipla Ltd. vs. Maharashtra General Kamgar Union*, (2001) 3 SCC 101 were pronounced by the this Court, and relying upon these decisions, an application was made by the respondent company before the court that the complaints were liable to be dismissed as there was no employer employee relationship between it and the complainants. The Industrial Court/Labour Court upheld the preliminary objection raised by the respondent company by holding that the judgments in *Kalyani Steel Ltd and Cipla Ltd* (supra) were applicable to the facts involved in the complaints and, therefore, the complaints deserve to be dismissed. The complaints were accordingly dismissed.

4. Thereafter the petitioners filed the present writ petitions challenging the dismissal of the complaints. In the meantime by its judgment in *Sarva Shramik Sangh vs. Indian Smelting and Refining Co Ltd*, (2003) 10 SCC 455 this Court has reiterated the view taken in *Kalyani Steel Ltd*. (supra) and *Cipla Ltd*. (supra).

5. The learned single Judge before whom the writ petitions came up for hearing noted that all these cases decided by the this Court were in respect of industries governed by the Industrial Disputes Act, 1947, whereas the present petition relates to an industry covered by the provisions of the Bombay Industrial Relations Act, 1946 (hereinafter referred to as the BIR Act). The learned single Judge noted that in the case of *Dattatraya Kashinath and others vs. Chhatrapati Sahakari Sakhar Karkhana Ltd and others*, 1996 II LLJ 169 and in *Sakhar Kamgar Union vs. Shri Chhatrapati Rajaram Sahakari Sakhar Karkhana Ltd and others*, 1996 II CLR 67 Srikrishna J., as he

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- A then was, had held that a conjoint reading of section 3(5) of the MRTU and PULP Act and sections 3(13) and 3 (14) of the BIR Act would indicate that even a person employed through a contractor in an industry governed by the BIR Act is regarded as an employee under the MRTU and PULP Act and the
- B complaint filed by such an employee is maintainable under the MRTU and PULP Act. The learned single Judge however, felt that another learned single Judge of this Court (Khandeparkar J.) in *Nagraj Gowda and others vs. Tata Hydro Electric Power Supply Co Ltd, Bombay and others*, 2003 III CLR 358 had
- C expressed a contrary view considering the judgments of the this Court in *Kalyani Steel Ltd, Cipla Ltd* (supra) and *Sarva Shramik Sangh* (supra) as also the judgment of the Division Bench of this Court in the case of *Hindustan Coca Cola Bottling Pvt Ltd. vs. Bharatiya Kamgar Sena*, 2001 III CLR 1025.
- D The learned single Judge therefore decided to make a reference to a larger Bench in view of the conflicting decisions of the learned single Judges of the High Court.

6. The questions, which were referred to the Full Bench of the High Court were:-

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(1) Whether a person who is employed by a contractor who undertakes contracts for the execution of any of the whole of the work or any part of the work which is ordinarily work of the undertaking is an employee within the meaning of section 3(5) of the MRTU and PULP Act?

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(2) Whether a complaint filed under the MRTU and PULP Act by an employee as defined under section 3(13) of the Bombay Industrial Relations Act, is maintainable although no direct relationship of employer employee exists between him and the principal employer?

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(3) Whether a complaint filed under the MRTU and PULP Act by employees under section 3(13) of the BIR Act can be dismissed if the employer claims that they are not his direct employees but are employed through a contractor,

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in view of the judgments of the Supreme Court in *Cipla* (supra), *Kalyani Steels Ltd* (supra) and *Sarva Shramik Sangh vs Indian Smelting and Refining Co Ltd* (supra)?

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7. The Full Bench of the Bombay High Court answered the question numbers 1 and 2 referred to it in the affirmative, and question number 3 in the negative provided the contractors workmen were employed to do the work of the whole or part of the undertaking.

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8. It is this decision which has been challenged before us.

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9. A large numbers of decisions have been cited before us. e.g. *Vividha Kamgar Sabha vs. Kalyani Steel Ltd. & another* (2001) 2 SCC 381, *Cipla vs. MGK Union* (2001) 3 SCC 101, *Sarva Shramik Sangh vs. Indian Smelting & Refining Company Limited* (2003) 10 SCC 455, *M/s Hindustan Lever Limited vs. Ashok Vishnu Kate* (1995) 6 SCC 326, *NTPC vs. Badri Singh Thakur and others.* (2008) 9 SCC 377, *Hindalco Industries vs. Association of Engineering Workers* (2008) 13 SCC 441, *Ahmadabad Mfg. and Calico Ptg. Co. Ltd. vs. Ram Tehel Ramnand* (1972) 1 SCC 898, *Saraspur Mill Co. Ltd. vs. Ramanlal Chimanlal* (1974) 3 SCC 66, *Shramik Uttakarsh Sabha vs. Raymond Woolen Mills Ltd. & others* (1995) 3 SCC 78.

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10. In our opinion, in view of the difference of opinion in some of these decisions and the importance of the controversy involved and its application particularly in the State of Maharashtra, an authoritative decision is required by a larger bench on the issues involved.

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11. Hence, we refer the matter to a larger bench on the issues referred to above.

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12. Let the papers of this case be placed before Hon'ble the Chief Justice of India for constituting a larger bench.

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Matter referred to larger Bench.

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