Bombay High Court Hindustan Coca Cola Bottling S/W ... vs Bhartiya Kamgar Sena And Ors. on 12 October, 2001 Equivalent citations: 2002 (3) BomCR 129, (2002) 1 BOMLR 123, 2002 (92) FLR 160, 2002 (1) MhLj 559 Author: A Shah Bench: A Shah, D Bhosale JUDGMENT A.P. Shah, J. 1. These appeals are directed against a common order passed by the learned single Judge dismissing the writ petitions filed by the appellants. The relevant facts lie in a narrow compass. The appellant No. 1 is a company engaged in the business of producing and manufacturing soft drinks of various brands, such as Coca Cola, Thums Up, Limca etc. The appellant company has employed certain employees through the contractors. The respondents Nos. 2 and 3 in Appeal No. 782 of 2001 are the contractors. The employees and their union, viz. Bhartiya Kamgar Sena filed complaints of unfair labour practices under items 5, 6, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, hereinafter referred to as the "MRTU & PULP Act". The employees and the union would be hereinafter referred to as "the respondents". It was the case of the respondents before the Industrial Court that the concerned employees were in the employment of the appellant company for a period ranging from 2 to 16 years as set out in the complaints without any interruption. It was specifically averred in the complaints that the so-called contractors, being individuals, were having no office but were operating from their residence. The respondents further averred that the employees were working under the supervision and control of the management of the appellant company. According to the respondents, the services of these employees were engaged by the appellant company and that the nature of work done by them was of permanent and perennial nature. It was the grievance of the said respondents that the persons employed were falsely labelled as contract labour engaged through the contractors. According to them, as they were doing the same work under the same roof and under the same management, they were entitled to be treated as the regular employees of the appellant company to get all the benefits available to the regular employees of the appellant company. It was emphasised that the so-called contracts were a sham paper arrangement and that there was no genuine and real contract labour engaged by the appellant company. In view of the aforesaid pleadings, the respondents sought reliefs from the Industrial Court as follows :– (a) It be decided and declared that the respondents have engaged in and are continuing to engage in Unfair Labour Practices under items 5, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971 and they be refrained from engaging in such acts of unfair labour practices.

(b) It be decided and declared that the respondent No. 3 is a sham contractor and the complainants are employees of the respondent No. 1 company.

(c) It be decided and declared that the complainants are entitled to all benefits and privileges available under the settlement/agreements entered into between the respondent No. 1 and Union of employees of respondent No. 1 and the respondents be directed accordingly."

They also sought interim orders to protect the existing position of employment which was granted by the Industrial Court and confirmed by the learned single Judge of this Court.

2. The appellant company has filed its written statement to contest the complaints of unfair labour practices on the grounds, inter alia, that the concerned persons were not the direct and regular employees of the appellant company but they were engaged through the contractors and there was no master and servant relationship between the appellant company on the one hand and the contract labour on the other. The appellant company denied all other charges of unfair labour practices against it levelled in the complaints.
3. While the complaints were pending before the Industrial Court, the Supreme Court delivered its judgment in the case of Vividh Kamagar Sabha v. Kalyani Steels Ltd. and Anr., 2001 (I) CLR 532 as also in Cipla Limited v. Maharashtra General Kamgar Union and Ors., 2001 (I) CLR 754. Based on these two judgments, the appellant company filed applications in each of the aforesaid complaint alleging, inter alia, that the Industrial Court had no jurisdiction under the MRTU & PULP Act to decide a question as to whether any particular contract was sham and bogus and whether the contract workers were in fact the direct workmen of the principal employer. It was contended that the complaints were not maintainable in law and were liable to be dismissed. Both the applications were rejected by the Industrial Court and the order passed by the Industrial Court was confirmed by the learned single Judge.
4. The learned single Judge held that in the case of Cipla Ltd, and Kalyani Steels Ltd. (supra), the whole evidence and the entire material was placed before the Industrial Court on the basis of which it was found that there was no employer-employee relationship between the contract labour and the principal employer and under these circumstances, the Supreme Court has held that if the employees fail to establish employer-employee relationship by adducing proper material, it cannot be said that the principal employer was guilty of any unfair labour practice alleged by the employees. The learned single Judge observed : "10. At the outset I must express my inability to accept the contention of Shri Cama, the learned Counsel for the petitioners that the proceedings under MRTU & PULP Act are of the summary nature. From the preamble to the last item of the schedules it would be crystal clear that the enactment contemplates a full fledged trial of the complaint filed by the parties before the appropriate courts under Section 28 read with Section 36 of the Act. The appropriate court has to accept the pleadings and documents from both the parties and record evidence and have to hear both the sides and deci'de the complaints under Section 26 of references under Sections 24 and 25 of the Act in accordance with law. The courts under this Act are empowered to decide all the incidental issues arising during the course of the proceedings. The Act further provides a revision under Section 44 of the Act from the

orders of the labour court to the Industrial Court. Section 59 of the Act puts embargo on the parties to file any other proceedings relating to the same cause of action decided by the courts under this Act either under the Industrial Disputes Act or the Bombay Industrial Relations Act, as the case may be. The decision of the courts under this Act are regarded to be final. Violation of any provisions of the Act and disobedience of the orders attract penalties and attract penal consequences. I am, therefore, not able to agree with Shri Cama that the complaints filed under the Act are of summary nature and that the Industrial Court has no powers and jurisdiction to decide the employer-employee relationship in the narrow jurisdiction being of summary nature."

5. The learned Judge was of the view that the Industrial Court will have to go into all the aspects of the matter and will have to decide the issue of real relationship of the alleged contract labour, i.e. the employees with the principal employer. Similarly, the Industrial Court will have to address itself on the issue whether the supplier of the labour had become a contractor and what would be the deeming effect of non-registration by the appellant company and non-obtaining valid licence under the Contract Labour (Regulation and Abolition) Act on the relationship between the parties. The learned Judge concluded that the Industrial Court has merely postponed the decision on the issue of employer employee relationship and directed the Industrial Court to frame an issue in this respect and decide the same on merits on the basis of the evidence and material produced by the parties.
6. Mr. Cama, learned Counsel appearing for the appellants strenuously urged that the learned Judge has totally misconstrued the judgments of the Supreme Court in the case of Cipla Ltd. & Kalyani Steels Ltd. He submitted that in the said judgments the Supreme Court has categorically held that the Industrial Court under the MRTU & PULP Act does not possess jurisdiction to lift the veil and to determine whether the contract is a genuine contract or the contractor is a sham or bogus party and that requires regular adjudication under the Industrial Disputes Act, 1947. He submitted that the learned Judge has committed a grave error in concluding that the ratio of the aforesaid two judgments of the Supreme Court was founded on the fact that the entire material was placed before the Industrial Court and that the Industrial Court had found in favour of the employer on merits on evidence. He submitted that this is directly contrary to what is laid down by the Supreme Court in these two cases. Mr. Cama submitted that the learned single Judge was also wrong in holding that the contractor had no valid licence. He relied on the affidavit filed by the appellant company along with copies relating to registration and licence.
7. Mr. Deshmukh, learned counsel appearing for the employees and Mr. Bukhari, learned counsel appearing for the union, have strongly refuted the submissions made by Mr. Cama. According to the learned Counsel, in the cases of Cipla Ltd. & Kalyani Steels Ltd., the Court was

satisfied on the evidence and material placed before the Industrial Court in those matters that there was no employer and employee relationship between the principal employer and the contract labour employed through the contractors. It was submitted by them that those conclusions were based on the evidence and material adduced by both the parties in a full fledged trial and not on the basis of the pleadings and in any event not at the threshold. According to the counsel, it is well settled position of law that mere denial of employer-employee relationship does not and cannot oust the jurisdiction of the Labour Court or Industrial Court to make an enquiry into the right claimed by the employee. In other words, the contention is that mere dental of status by the employer will not divest the Labour Court or the Industrial Court of their jurisdiction to decide the question of relationship between the parties. The counsel submitted that even if the employer denies the status of the employee the Industrial Court will have to examine as a preliminary issue as to whether the relationship of employer and employee, in fact existed between the parties and the question whether the employee is entitled to reliefs, will depend upon such finding. It was urged that the finding that the Industrial Court may record on this preliminary issue will decide whether it has jurisdiction to deal with the dispute or not. If the finding is that there was no relationship of employer-employee, that would mean an end to the proceedings before the Court so far as the main dispute is concerned. If on the other hand, the finding is that the contractor was merely a sham and the contract was only a paper arrangement, the Industrial Court will be entitled to deal with the complaint. The finding which the Industrial Court may take on this preliminary issue is a finding on the jurisdictional fact and it is only when the jurisdictional fact is found against the employer, the Industrial Court could deal with the merits of the complaints. In this regard, reliance was placed on the decisions of the Supreme Court in Express Newspapers Ltd. v. Their workmen and the Staff 1962 (5) FLR 205 and Bidi Etc. Merchants Association v. State of Bombay, (FJR (XXI) 331). It was contended that the doctrine of implied powers would be applicable in such cases. This doctrine is based on the legal maxim 'Quando lex aliquid concedit concedere videtur et illud sine quo res ipsa ease non potest' which means whoever grants a thing is deemed also to grant that without which the grant itself would be of no effect. Based on this doctrine it was urged that the Industrial Court or the Labour Court must be presumed to possess auxiliary or incidental power to determine the question of employer employee relationship. It was submitted that the decisions of the Supreme Court in Cipla Ltd. & Kalyani Steels Ltd. should be viewed in the context of the facts of the case. It was submitted that a decision is only an authority for what it actually decides and what is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it.

8. Before adverting to the submissions of the learned Counsel the admitted

facts may be indicated. There is no dispute that the employees in question were engaged through the contractors. This position is conceded in the complaints but it is contended that the contractors are merely namelenders and that the contracts are sham and on that basis a declaration is sought by the respondents that the employees are the direct employees of the appellant company. On the other hand, according to the appellants, the employees are the workers of the contractors and not of the company. The question, therefore, that arises for consideration is whether in the absence of undisputed or indisputable employer-employee relationship between the parties, can the complaint of unfair labour practice be entertained by the Labour Court or the Industrial Court constituted under the provisions of the MRTU & PULP Act.

9. In Cipla Ltd., the respondent Union had filed a complaint against the appellant therein under Section 28 of the Act alleging that the appellant company has been engaging persons but on paper they are shown as 'contract workmen' working for contractor, that the contractor is only a namelender whereas the appellant is the real employer of the workmen. It was alleged that the appellant company denied the relationship of employer and employee but that such denial of relationship was only to deprive the workmen of permanency in the company and payment of wages as are applicable to the permanent workmen of the company, The company, apart from denying that it is guilty of unfair labour practices, contended that the employees in question were not the employees of the company, nor were they employed ostensibly through the contractor. The Labour Court came to the conclusion that the contractor was a separate entity and the contract was genuine and therefore dismissed the complaint. This decision of the Labour Court was confirmed by the Industrial Court. In a writ petition filed by the Union the Division Bench of this Court after noticing the decisions of the Supreme Court in General Labour Union (Red Flag) Bombay v. Ahmedabad Mfg. and Calico Printing Co. Ltd. and Ors., 1995 Supp (1) SCC 175 and Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat v. Hind Mazdoor Sabha and Ors., , held that the Industrial Court is entitled to go into the question of employer employee relationship and the observations of the Supreme Court in the case of Ahmedabad Mfg. and Calico Printing Co (supra) would not mean that the employees had to establish the relationship in some other proceedings before the complaint is filed or that if the complaint is filed, the moment the employer repudiates or denies the relationship of employer and employee, the Court will not have any jurisdiction. On that basis the Division Bench proceeded further to consider the matter and reverse the findings recorded by the two Courts and gave a finding that the workmen in question are not workmen of the appellant company.

10. In Cipla Ltd., the Supreme Court has categorically held that if the case put forth by the workmen is that they have been employed by the contractor but the contract itself is a camouflage and in fact they are direct employees of the employer, this issue can only be gone into by the appropriate Indus-

trial Tribunal or Labour Court constituted under the Industrial Disputes Act. It is observed by the Supreme Court in para 7 as under :– "7. 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 Tribunal 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 practices 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 repudiate 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 I. D. Act."

11. As regards the question as to whether Section 32 of the Act confers such powers on the Labour Court or Industrial Court, the Supreme Court in terms held : "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 Tribunal 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 a workmen can be stated to be the workmen of the appellant establishment 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 workmen 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 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 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 recognised the workmen mentioned in Exhibit"A" as

its employees and throughout treated these persons as the employees of the second respondent. If that 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) Bombay v. Ahmedabad Mfg. and Calico Printing Co. Ltd and Ors. (supra), which view was reiterated by us in Vividh Kamgar Sabha v. Kalyani Steels Ltd. and Anr., 2001 (I) CLR 532 SC."

12. Having gone into all the aspects, the Supreme Court concluded the legal position thus : "10. .... The learned Counsel pointed out that in the event we were to hold that it is only in clear cases of undisputed cases the Labour Court or the Industrial Tribunal under the Act can examine the complaints made thereunder, the whole provision would be rendered otiose and in each of those cases provisions of the Bombay Industrial Relations Act, 1946 or the Industrial Disputes Act will have to be invoked, we are afraid that this argument cannot be sustained for the fact that even in respect of claims arising under Section 33-C(2) appropriate dispute can be raised in terms of Section 10 of the Industrial Disputes Act and that has not been the position in the present case. Nor can we say that even in cases where employer-employee relationship is undisputed or indisputably referring to the history of relationship between the parties, dispute can be settled and not in a case of the present nature where it is clear that the workmen are working under a contract. But it is only a veil and that will have to be lifted to establish the relationship between the parties. That exercise, we are afraid, can also be done by the Industrial Tribunal under the Bombay Industrial Relations Act, 1946 or under the Industrial Disputes Act. Therefore, we are afraid that the contention advanced very ably by Shri Singhvi on behalf of the respondents cannot be accepted. Therefore, we hold that the High Court went far beyond the scope of the provisions of the Act and did not correctly understand the decisions of this Court in Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat v. Hind Mazdoor Sabha and Ors. (supra) and General Labour Union (Red Flag) Bombay v. Ahmedabad Mfg. and Calico Printing Co. Ltd and Ors. (supra). The correct interpretation of these decisions will lead to the result which we have stated in the course of this order."

13. It would be apparent from the above observations of the Supreme Court that if the employer-employee relationship is established by the competent forum, viz. Industrial Tribunal or Labour Court under the Industrial Disputes Act or the employer-employee relationship is undisputed or indisputable then the complaint under the MRTU & PULP Act would be maintainable. We hasten to add that as pointed out by the Supreme Court in Cipla Ltd. if at any time the employer-employee relationship is recognised by the employer and subsequently it is disputed such a question would be incidental question arising under Section 32 of the Act and the Labour Court or the Industrial Court as the case may be would be competent to decide such question. However, in a case where the employer had never recognised the workmen as his employees and throughout treated

these persons as employees of the contractors, the court constituted under Section 28 of the MRTU & PULP Act will have no jurisdiction to entertain the complaint unless the status of relationship of employer-employee is first determined in a proceedings under the Industrial Disputes Act.

14. In Kalyani Steels Ltd. (supra), another two-Judges Bench of the Supreme Court has taken an identical view. In fact, the said decision was rendered earlier in point of time and was affirmed in the Cipla Ltd. In Kalyani Steels Ltd. the appellant-union claimed that even though the concerned workmen are actually the workmen of the employer, the employer is not treating them at par with other employees but have notionally engaged contractors to run the canteen. This complaint came to be dismissed by the Industrial Court. The appellant union then filed SLP directly to the Supreme Court on the ground that in the case of Krantikari Suraksha Rakshak Sangathana v. S. V. Naik reported in 1993 (I) CLR1002 has already held that the Industrial Court cannot in a complaint under MRTU & PULP Act to abolish contract labour and treat employees as direct employees of the company. In Kalyani Steels Ltd., the Supreme Court, after referring to its earlier decision in Ahmedabad Mfg. & Calico Printing Co. Ltd. (supra) observed as follows : "5. The provisions of MRTU & 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 complaint could be made under the provisions of MRTU & PULP Act.

15. Faced with this situation it was submitted that the respondent company had always recognised the members of the appellant-Union to be their, own workmen. It is submitted that a formal denial was taken only to defeat the claim. We see no substance in this submission. In the written statement it has been categorically denied that the members of the appellant-union were employees of the respondent-company. The question has been agitated before the Industrial Court. The Industrial Court has given a finding, on facts, that the members of the appellant-Union were not employees of the respondent-company. This is a disputed fact and thus till the appellants or their members, get the question decided in a proper forum, this complaint was not maintainable."

16. It would also be useful to refer to the decision of the Supreme Court in Ahmedabad Mfg. & Calico Printing Co. Ltd. which has been referred to in both Cipla Ltd. and Kalyani Steels Ltd. In that case, the complaint of the Union was that 21 workmen who were working in one of the canteen of the respondent-company, were not given the service conditions as were available to the other workmen of the company and there was also a threat of termination of their services. It was an admitted position in that case that the workmen were employed by a contractor who was given a contract to run the canteen in question. The complaint, however, was, filed on the footing that the workmen were the employees of the company and,

therefore, the breaches committed and the threats of retrenchment were cognizable by the Industrial Court under the MRTU & PULP Act. Even in the complaint, there was no case made out that the workmen in question had ever been accepted by the company as its employees. However, the complaint proceeded on the basis as if the workmen were a part of the work-force of the company. The Industrial Court dismissed the complaint, holding that since the workmen were not the workmen of the respondent company, the complaint was not maintainable under the MRTU & PULP Act. The High Court in writ petition confirmed the said finding and dismissed the petition also on the same ground. In Appeal, while confirming the decision of the High Court, the Supreme Court held thus : "2. As pointed out both by the Industrial Court and the High Court, it was not established that the workmen in question were the workmen of the respondent company, in the circumstances, no complaint could like under the Act as is held by the two courts below. We, therefore, find nothing wrong in the decision impugned before us. The workmen have first to establish that they are the 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. 3. The appeals, therefore, stand dismissed with no order as to costs'."

17. Mr. Cama also drew our attention to an unreported decision of the learned single Judge of this Court (Khandeparkar, J.) in Indian Seamless Metal Tubes Limited v. Sunil Iwale and Ors., Writ Petition No. 1433 of 2000 decided on 5th July, 2001. In that case the learned Judge has not agreed with the view taken by Kochar, J. in the present case and held that in view of the decisions of the Supreme Court in Cipla Ltd. and Kalyctni Steels Ltd. that only precondition to seek remedy under the MRTU & PULP Act is necessity of existence of employer-employee relationship between the parties and when its existence is not already established or is disputable, the party has to first seek relief under the Central Act, i.e. the Industrial Disputes Act or the Bombay Act, i.e. the Bombay Industrial Relations Act, and if successful therein to seek remedy under the said Act thereafter. We are in agreement with the observations of the learned Single Judge but with a rider that in cases where the employer-employee relationship was recognised at some stage and thereafter it was disputed, the Industrial Court has jurisdiction to decide this issue as an incidental issue under Section 32 of the MRTU & PULP Act.

18. In his judgment Khandeparkar, J. has referred to a judgment of another single Judge Rebello, J. in Writ Petition No. 1365 of 2001, Raigad Mazdoor Sangh v. Vikram Bapat. Rebello, J. has, inter alia, held that while deciding the question of maintainability of the complaint under MRTU & PULP Act, the Industrial Court is bound to frame an issue as a preliminary issue on that count and after framing the preliminary issue decide the point of jurisdiction. Khandeparkar, J. has, however, disagreed with this

view and held that the question of framing such issue does not arise if on a perusal of the complaint under the MRTU & PULP Act it is found that there is no jurisdiction to try the complaint. He observed : "20. It was also sought to be contended that mere denial of status of the complainant as that of employee by the opponent, cannot non-suit the employees and such denial would not oust the jurisdiction to the Industrial Court to ascertain the fact situation by framing issues and asking the parties to lead evidence in mat regard, and to decide the same, possibly by summary manner. In fact, similar was the contention sought to be raised in Vividh Kamgar Sabha's case by saying that such denials can be raised in each and every case to defeat the claim of the employee, the contention was rejected by the Apex Court. Indeed, a question of framing of issue or holding of summary inquiry does not arise at all. Once, it is clear that the Industrial Court under the said Act has no jurisdiction to decide the issue relating to employer-employee relationship, the occasion for framing of issue on the point which is beyond its jurisdiction cannot arise. Once it is clear that the jurisdiction of the Industrial Court depends upon the fact of existence of employer-employees relationship between the parties which is a jurisdictional fact, which should exist to enable the Industrial Court to assume jurisdiction to entertain the complaint under the said Act, in the absence of the same, any attempt on the part of the Industrial Court to adjudicate upon the issue of such relationship would amount to mistake of fact in relation to jurisdiction." We are in respectful agreement with the above view expressed by Khandeparkar, J. If, on a bare reading of the complaint, the Industrial Court or the Labour Court as the case may be, is satisfied that it has no jurisdiction to decide the complaint as there is no undisputed or indisputable employer-employee relationship, the occasion for framing an issue on that count would not arise. If the Industrial Court or the Labour Court is satisfied that there is no undisputed or indisputable the employer/employee relationship, it cannot assume jurisdiction to entertain the complaint and the complaint will have to be dismissed as not maintainable.

19. In the light of the foregoing discussion, we have no hesitation in holding that in the instant case complaints filed by the Union and the employees are not maintainable and the Industrial Court has no jurisdiction to try these complaints.

20. The next question is what would be the fate of about 400 workers who are involved in the present proceedings. They have been working in the appellant's establishment for a period of 2 years to 16 years. Taking into consideration the fact that the employees have been working with the company for long durations and there was interim protection granted to the employees which was also confirmed by this Court and also having regard to the fact that there is no possibility of amicable settlement of the dispute in conciliation, we think that the ends of justice would be better served by directing the State Government to treat the complaints as industrial disputes under Section 10 of the Industrial Disputes Act and

to make reference to the appropriate Industrial Tribunal accordingly. A similar order passed by the Division Bench in Writ Petition No. 1023 of 2000, The Federation of Hindustan Lever Ltd. v. The Secretary, State Contract Labour Advisory Board and the SLP filed against that order was dismissed by the Supreme Court.

21. In the result, both the petitions succeed. The order of the learned single Judge as well as the order of the Industrial Court are quashed and set aside. The complaints are dismissed as not maintainable. The State Government is directed to treat the complaints as industrial dispute and refer the same to the Industrial Tribunal within eight weeks from today. The Industrial Tribunal shall decide the reference within six months from the date of receipt of the reference. The interim injunction granted by the Industrial Court is continued for a period of three months. The respondents are at liberty to make application before the Industrial Tribunal for continuation of the interim reliefs and if such an application is made by the respondents, the same shall be disposed of by the Industrial Tribunal within a period of four weeks and the interim injunction already granted will continue till the disposal of the said application and for a period of four weeks thereafter. If the respondents fail to make the application within two weeks from the date of intimation of reference from the Tribunal, the interim injunction shall automatically come to an end. The Prothonotary and Sr. Master is directed to communicate this order to the State Government forthwith for necessary compliance. Parties and concerned Authority to act on the copy of this order duly authenticated by the Personal Secretary of this Court.
22. Petitions allowed.