Cipla Ltd vs Maharashtra General Kamgar Union & Ors on 21 February, 2001

Equivalent citations: AIR 2001 SUPREME COURT 1165, 2001 AIR SCW 929, 2001 LAB. I. C. 1108, 2001 (1) UJ (SC) 528, (2001) 3 JT 49 (SC), 2001 (1) LRI 766, 2001 (3) SCC 101, 2001 (2) SCALE 152, 2001 LAB LR 305, 2001 (3) SRJ 453, 2001 SCC (L&S) 520, (2001) 98 FJR 632, (2001) 89 FACLR 163, (2001) 2 LAB LN 19, (2001) 2 MAHLR 431, (2001) 2 SCT 233, (2001) 5 SERVLR 1, (2001) 2 SUPREME 112, (2001) 2 SCALE 152, (2001) 1 CURLR 754, (2001) 1 LABLJ 1063, (2001) 2 BOM CR 822

Bench: S. Rajendra Babu, S.N. Phukan

CASE NO.:
Appeal (civil) 12845 of 1996

PETITIONER:
CIPLA LTD.

Vs.

RESPONDENT:
MAHARASHTRA GENERAL KAMGAR UNION & ORS.

DATE OF JUDGMENT: 21/02/2001

BENCH:
S. Rajendra Babu & S.N. Phukan.

JUDGMENT:

J U D G M E N TL...I...T.....T.....T.....T.....T.....T.....T..J RAJENDRA BABU, J. :

The first respondent, which is a Union of the workmen, filed a complaint against the appellant for unfair labour practices under Section 28 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (for short the Act) under Item 1(a) by way of victimisation; (b) not in good faith, but in the colourable exercise of the employers right; (d) for patently false reasons; and (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste of Scheduled IV of the Act. Before the Seventh Labour Court at

Bombay it was claimed by the respondent herein that the statutory duty of the appellant is not only to keep the factory premises clean, hygienic and dust free but also the surroundings thereof in terms of Schedule M of Drugs & Cosmetics Act, 1940 and the employees engaged for such process are, therefore, employees of the company itself; that, in fact, the appellant had been directly employing the workmen to attend such work and the appellant used to appoint such persons on casual or temporary basis and terminate their services from time to time with a view to depriving them of the permanent status and wages and other benefits as applicable to permanent workmen of the appellant; that this situation continued till the year 1990-91 when such casual or temporary workmen engaged in cleaning process joined the respondent-Union in order to protect their rights for permanency in the appellant-company; that since about 1991 the appellant has been engaging persons but on paper they are shown as contract workmen working for contractor, respondent No. 2 herein; that the second respondent is only a name lender whereas the appellant is the real employer of the workmen; that the appellant through the second respondent terminated the services of such workmen employed through second respondent the moment the persons completed 11 months of services thereby depriving them of the status of permanent workmen; that the entire effort being made to avoid giving permanency to the workmen concerned with sanitation, sweeping and in keeping the factory premises and surrounding thereof in a hygienic condition. It is further alleged that there are about 30 such workmen who were engaged in such activities; that in keeping with the past practice, the respondent had reasons to apprehend that the moment any of the workmen completes 11 months of service, the services of such employee would be terminated. It is submitted on behalf of the respondent that the recruitment of such workmen is done by the appellant and upon selection such workmen are sent to appellants doctor for medical check up. However, they are not given any appointment letters but are given attendance cards by the second respondent only to show that they are the employees of the second respondent and not that of the appellant. They claimed that they are the workmen working under the direct supervision, control and direction of the officers of the appellant who assign work to them and they are granted leave by the officers of the appellant and are also paid by the appellant; that the company is the real employer apart from being the employees because of statutory obligation of the company to employ such workmen; that, however, the appellant denied the relationship of employer-employee from various stages; that such denial of relationship is only to deprive the workmen of permanency in the company and payment of wages as are applicable to the permanent workmen of the company; that the company has denied this relationship as employer and thus this cause of action has arisen in this complaint; that the appellant has engaged in unfair labour practices in terms of Act and it be directed to cease and desist from continuing to do so.

The appellant, apart from denying that it is guilty of unfair labour practices under Items 1(a), (b), (d) and (f) of Scheduled IV of the Act, contended that the persons listed in Exhibit A and referred to in the complaint are not the employees of the

company nor are they employed ostensibly through the second respondent. The appellant categorically denied that they are the employees of the company and there has never been any employer-employee relationship between them and, therefore, the question of terminating the services of the employees employed by the second respondent would not arise. The appellant contended that since it is engaged in the manufacture of pharmaceutical products for which a high degree of cleanliness and hygiene is required to be maintained and, therefore, it is necessary for the company to seek the services of the specialised agencies and this practice has been in vogue for several years and in the last eight year such services have been obtained from three different agency and they are (i) M/s Estate Services, (ii) M/s Advent Clean & Care Corporation and (iii) M/s Deluxe Estate Services. The second respondent had been engaged as an agency for rendering house- keeping and hygiene services and the terms of the engagement were set out in a letter dated 28.2.1992. Pursuant to such rendering of services the second respondent had engaged services of the persons named in Exhibit A. The appellant contended that the named persons in the Exhibit A to the complaint are those who have joined the second respondent only during the last 3 to 8 months. The appellant denied that it interviewed and selected the persons to be employed by the second respondent, but it was expected that persons employed by the second respondent were subjected to periodical medical examination in order to comply with the statutory requirements for maintaining proper hygiene integrity of the manufacturing processes of the company. It is also denied by the appellant that the workmen are working under the direct control and supervision of the officers of the company and there is any employer-employee relationship between them. It was submitted that the second respondent pays wages to those employees in accordance with or more than the minimum wages. It is also contended that the appellant has obtained registration as required under the earlier Act and the copy of which was produced in the proceedings. The second respondent supported the contentions made by the appellant.

The Labour Court on the basis of these pleadings framed the following issues: ISSUES@@ JJJJJJ

1. Does the complainant prove that the company indulged in unfair labour practices as alleged ?

2. ---------deleted---------

3. Does he prove that he is entitled the relief as prayed for?

4. What order ?

ADDITIONAL ISSUES 3A. Whether the complaint is maintainable? 3B. Whether the complainant prove that the names in Annexure A are the workmen of the Respondent No.1? 3C. Whether this Court has jurisdiction to entertain the complaint?

The Labour Court, after elaborate consideration of the pleadings and evidence on record, came to the following@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJ conclusion:@@ JJJJJJJJJJ It can be seen from the evidence on record and the documents filed by the parties that different contractors engaged by the first respondent company and these workmen had never worked in the first respondent company but they had worked through second respondent. Hence, the arrangement between the respondent No. 1 & 2 can be said to be legal and bonafide. The second respondent has also obtained licence No. 2796 under the provisions of Contract Labour (Regulation & Abolition) Act, 1971 which is at Exh.C-14 at page 5. The respondent No. 2 has its own separate and independent establishment which has been registered under the provisions of Bombay Shops and Establishment Act, 1948. It is also independently and separately registered under the provisions of Employees Provident Fund and Miscellaneous Provisions Act. These documents are produced At Sr.No.10 of Exh.C-14. From these documents, it is crystal clear that it is a separate entity and there is a contract between the first respondent and second respondent in respect of sweeping and cleaning in the company premises.

After further examination, it was held that the arrangement between the appellant and the second respondent can only be termed as legal and bona fide and hence the matter of abolition of contract labour in the process of house-keeping and maintenance of the premises of the factory can be agitated only under the provisions of Contract Labour (Regulation and Abolition) Act, 1970. Therefore, the Labour Court dismissed the complaint filed by the first respondent-Union. When the matter was carried by revision under the Act the Industrial Court dismissed the revision application by reiterating the views of the Labour Court.

In the writ petition the Division Bench of the High Court took a different view of the matter and allowed the complaint. Before the High Court several decisions were referred to including the decision of this Court in General Labour Union (Red Flag), Bombay v. Ahmedabad Mfg. & Calico Printing Co. Ltd & Ors., 1995 Supp. (1) SCC 175. In that case the complaint of the Union was that 21 workmen who were working in one of the canteens 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. This Court proceeded to consider the case on the basis that their complaint was that the workmen were the employees of the company and, therefore, the breach committed and the threats of retrenchment were cognizable by the Industrial Court or the Labour Court under the Act. Even in the complaint no case was made out that the workmen had ever been accepted by the company as its employees. On the other hand, the complaint proceeded on the basis as if the workmen were a part of the work force of the company. This Court noticed that the workmen were never recognised by the company as its workmen and it was the consistent contention of the company that they were not its employees. In those circumstances, the Industrial Court having dismissed the complaint and the High Court having upheld the same, this Court stated that it was not established that the workmen in question were the workmen of the company and in those circumstances, no complaint could lie under the Act as was held by the two courts. In that case it was the admitted position that the workmen were employed by a contractor, who was given a contract to run the canteen in question. Thereafter, the High Court adverted to the decision of this Court in Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat v. Hind Mazdoor Sabha & Ors., 1995 (5) SCC 27, wherein it was noticed that the first question to be decided would be whether

an industrial dispute could be raised for abolition of the contract labour system in view of the provisions of the Act and, if so, who can do so. The High Court was of the view that the decision in General Labour Union (Red Flag), Bombay v. Ahmedabad Mfg. & Calico Printing Co. Ltd & Ors. (supra) would make it clear that such a question can be gone into and that the observations would not mean that the workmen had to establish by 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 employees the court will not have any jurisdiction. The observation of this Court that it is open to the workmen to raise an appropriate industrial dispute in that behalf if they are entitled to do so has to be understood in the light of the observations of this Court made earlier. The High Court further held that the judgment in General Labour Union (Red Flag), Bombay v. Ahmedabad Mfg. & Calico Printing Co. Ltd & Ors. (supra) was confined to the facts of that case. On that basis the High Court proceeded to further consider the matter and reversed the findings recorded by the two courts and gave a finding that the workmen in question are the workmen of the appellant-company.

In this Court it was submitted that the High Court had proceeded entirely on wrong lines. In Gujarat Electricity Board, Thermal Power Station, Gujarat v. Hind Mazdoor Sabha (supra) the question raised was whether the workers whose services were engaged by the contractors but who were working in the thermal power station of the Gujarat Electricity Board at Ukai can legally claim to be the employees of the Gujarat Electricity Board. The industrial tribunal had adjudicated the matter and held that the workmen concerned in the reference could not be the workmen of the contractors and, therefore, all the workmen employed by the contractor should be deemed to be the workmen of the Board. The industrial tribunal also gave consequential directions to the Board for payment of wages, etc. The award of the industrial tribunal was upheld by the High Court in appeal. The contention put forth before this Court was that after coming into force of the Act it is only the appropriate Government, which can abolish the contact labour system after consulting the Central Board or the State Board, as the case may be, and no other authority including the industrial tribunal has jurisdiction either to entertain such dispute or to direct abolition of the contract labour system and neither the appropriate Government nor the industrial tribunal has the power to direct that the workmen of the erstwhile contractor should be deemed to be the workmen of the Board. The Central Government or the industrial tribunal, as the case may be, can only direct the abolition of the contract labour system as per the provisions of the Act but it does not permit either of them to declare the erstwhile workmen of the contract to be the employees of the principal employer. As to what would happen to an employee engaged by the contractor if contract employment is abolished is another moot question yet to be decided by this Court. But that is not a point on which we are called upon to decide in this matter.

contract covered by But one thing is clear - if the employees are working under a the Contract Labour (Regulation & 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 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 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.

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 the 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 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 workman 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 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 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. & Calico Printing Co. Ltd & Ors. (supra), which view was reiterated by us in Vividh Kamgar Sabha v. Kalyani Steels Ltd. & Anr., 2001 (1) SCALE 82.

However, Shri Singhvi very strenuously contended, by adverting to the scope of the Payment of Wages Act, 1936 and the scope of Section 32C(2) of the Industrial Disputes Act, that 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. The General Manager, Central Railway, V.T., Bombay, 59 BLR 892. 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 applicant was in the employment of the railway administration during the relevant period. It means that at one time or the other the concerned employee 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 to be considered.

India Ltd. v. Next decision relied upon by Shri Singhvi is the Central Bank of P.S. Rajagopalan etc., 1964 (3) SCR 140, to contend that even in cases arising under Section 33C(2) of the Industrial Disputes Act the scope, though very limited, certain incidental questions can be gone into like a claim for special allowance for operating adding machine which may not be based on the Sastry Award made under the provisions of Chapter V-A. The learned counsel pointed out that in the event we were to hold that it is only in clear cases or 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 33C(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, Gujarat v. Hind Mazdoor Sabha (supra) and General Labour Union (Red Flag), Bombay v. Ahmedabad Mfg. & Calico Printing Co. Ltd & Ors. (supra). The correct interpretation of these decisions will lead to the result, which we have stated in the course of this order In the view we have taken on the question of jurisdiction of the Labour Court under the Act, the decision given by the High Court on other questions need not be considered.

In the circumstances, we allow this appeal, set aside the order of the High Court and restore that of the industrial court affirming the order of the labour court. No costs.

[S. RAJENDRA BABU] [S.N. Phukan]@@ JJJJJJJJJJJJJ FEBRUARY 21, 2001.