## Vividh Kamgar Sabha vs Kalyani Steels Ltd. & Anr on 9 January, 2001

Equivalent citations: AIR 2001 SUPREME COURT 1534, 2001 (2) SCC 381, 2001 AIR SCW 170, 2001 LAB. I. C. 499, 2001 (1) SCALE 82, 2001 LAB LR 187, (2002) 1 JCR 429 (SC), 2001 (2) SRJ 90, (2001) 1 JT 303 (SC), (2001) 1 ALLMR 860 (SC), 2001 (1) JT 303, 2001 (1) UJ (SC) 454, (2001) 1 LABLJ 569, (2001) 1 LAB LN 782, (2001) 2 MAHLR 201, (2001) 1 CURLR 532, 2001 SCC (L&S) 436, (2001) 98 FJR 261, (2001) 88 FACLR 727, (2001) 3 RAJ LW 373, (2001) 1 SCT 708, (2001) 1 SERVLR 26, (2001) 1 SUPREME 76, (2001) 1 SCALE 82, (2001) 2 BOM CR 324, 2001 (1) BOM LR 585, 2001 BOM LR 1 585

## Bench: S.N. Variava, S.R. Babu

CASE NO.:
Appeal (civil) 3375 of 1998

PETITIONER:
VIVIDH KAMGAR SABHA

Vs.

RESPONDENT:
KALYANI STEELS LTD. & ANR.

DATE OF JUDGMENT: 09/01/2001

BENCH:
S.N.Variava, S.R.Babu

JUDGMENT:

L....I......T.....T.....T.....T.....T...J J U D G M E N T S. N. VARIAVA, J.

This Appeal is against an Order passed by the Industrial Court on 20th August, 1996. Briefly stated the facts are as follows: The Appellants claim to be a Union representing the workmen of a Canteen run by the Respondents. The Appellant Union claimed that even though the Appellants are actually the employees of the Respondents, the Respondents are not treating them at par with other employees and have notionally engaged contractors to run the canteen. As the Respondents were not accepting the Appellants' claim to treat them as their employees, the Appellant filed a Complaint

under Section 28(1) of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereinafter called the MRTU & PULP Act) alleging that the Respondents had engaged in unfair labour practices under Item Nos. 1, 1(a), 1(b), 4, 4(a) of Schedule II and Items 3, 5, 6, 7, 9 and 10 of Schedule IV of the MRTU & PULP Act. This Complaint came to be dismissed by the impugned Order dated 20th August, 1996. The Appellant Union has filed an SLP directly in this Court against this Order as the High Court of Bombay, in the case of Krantikari Suraksha Rakshak Sangathana v. S. V. Naik reported in (1993) 1 CLR Page 1002, has already held that the Industrial Court cannot in a complaint under MRTU & PULP Act abolish contract labour and treat employees as direct employees of the company. At this stage it must be mentioned that this Court has also in (1995) 2 LLJ 765, held that where the workmen have not been accepted by the Company to be its employees, then no complaint would lie under the MRTU & PULP Act. We are in full agreement with the above mentioned view. 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. 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. Accordingly, we dismiss this Appeal on the ground that the complaint was not maintainable. We clarify that it is open for the Appellant or their members to raise dispute in this behalf before an appropriate forum provided they are entitled to do so. If they get a declaration to the effect that they are employees of the Respondent Company, then it may be open to them to file such a complaint. It is also clarified that if a dispute as to their status is raised in an appropriate forum then the same will be decided on merits without taking into consideration any observations made or finding given by the Industrial Court in the impugned Order.