

President, Karad Nagar Parishad & Another

v.

Udaysingh B. Mohite & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN HON'BLE MR. JUSTICE
P. VENKATARAMA REDDI

Civil Appeal No. 2417 To 2418 Of 2001 | 21-01-2003

1. The contesting respondents herein filed a complaint before the Industrial Court at Satara, Maharashtra under section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "MRTUPULP") alleging that the appellant herein by resorting to unfair labour practices violated clauses 5, 6, 9 and 10 of Schedule IV of the Act. The gist of allegations was that these respondents were appointed in the Octroi Department by the appellant-Municipal Council, and they had continued to work in that capacity for a long period and were not being regularised, and the respondents sought a relief under section 30 of the Act. The appellant herein filed counter affidavit before the Industrial Court and submitted that these respondents were not working under the Council, but they were engaged through contractor and they being employees of the contractor, they were not entitled to seek regularisation. Large volume of evidence was adduced by the parties. The Industrial Court came to the conclusion that these respondents were working, and that they were really employees of the Council. The Industrial Court allowed the complaint with a direction to desist from unfair labour practice and to grant permanent status to the complainants with consequential benefits.

2. This order passed by the Industrial Court was challenged by the appellant herein before the High Court of Bombay under Art. 226 of the Constitution. The High Court without considering the rival contentions raised by parties in detail, dismissed the matter in-limine. The appellant had also filed LPA and that too was dismissed. Aggrieved by these two judgments of High Court, the appellant has filed these appeals by Special leave.

3. Heard Mr. L.N. Rao, the learned senior counsel for the appellants and Mr. Ajay Majithia, the learned counsel for the respondents.

4. The counsel for the appellants contended before us that the Industrial Court had no jurisdiction to decide the question as to whether respondents were employees of the appellants-council or not and the powers under section 28 and 30 of MRTUPULP Act, 1971 could be invoked only in a situation where the employer and employees relationship is admitted. In support of this contention, our attention was drawn to two decisions of this Court, one reported in *Vividh Kamgar Sabha vs. Kalyani Steels Ltd. and Anr.* (2001) 2 SCC 381, and other in *Cipla Ltd. vs. Maharashtra General Kamgar Union and others* (2001) 3 SCC 101.

5. The counsel for the respondents, on the other hand, contended that this plea was not raised by the appellants before the High Court and the Industrial Court has taken a decision after having considered all the materials before it, and therefore, the question that the respondents are employees of the Council is rightly decided by the Labour Court and that there was no want of jurisdiction when appellant itself submitted to the jurisdiction and invited a decision on the point.

6. In the impugned judgment passed by the learned Single Judge of the Bombay High Court and the Division Bench, this question was not considered and there is also no material to show that the appellants herein had raised such question regarding the jurisdiction of the Industrial Court to decide the issue. It is true that in the counter affidavit filed before the Industrial Court appellants had raised a contention regarding jurisdiction and stated that the complaint was not maintainable against the appellants in general terms. On merits, we see that the parties on either side produced several documents before Industrial Court and these documents were not considered by the High Court at all and when a serious question was agitated before the High Court, the matter should have been gone into in order to consider whether the finding recorded by the Tribunal can be said to be perverse or unreasonable. We are constrained to remit the matter to the High Court to re-hear the Writ Petition and dispose it on merits in accordance with law expeditiously. As the matter was also dealt with by the Division Bench in LPA, it is just and proper that the Writ Petition be heard by a Division Bench of the Bombay High court and disposed of expeditiously. As we are remitting the matter to the High Court, the High Court may also consider whether the contention as to maintainability should be permitted to be raised

and if so, the legal principle decided by this Court in the aforementioned cases would have bearing on this case.