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VIVIDH KAMGAR SABHA
v.
KALYANI STEELS LTD. AND ANR.

JANUARY 9, 2001

B

[S. RAJENDRA BABU AND S.N. VARIAVA, JJ.]

Labour Law:

C *Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971: Section 28(1)—Complaint under—Maintainability of—Held: The provisions of MRTU & PULP Act can only be enforced by persons who are workmen—Only after establishing the status as a workman complaint can be made under the MRTU & PULP Act.*

D **The appellants claimed that they were the employees of the respondent. But the respondent did not treat the appellants as its employees. Therefore, the appellants filed a complaint before the industrial Court under Section 28(1) of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 alleging that the respondent had engaged in unfair labour practices under the Act, which was dismissed as not maintainable. Hence this appeal.**

E

Dismissing the appeal, the Court

F **HELD : 1. The provisions of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 can only be enforced by persons who admittedly are workmen. If there is a 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 workman is established in an appropriate forum that a complaint could be made under the provisions of MRTU & PULP Act.**

[110-B]

G

Central Labour Union (Red Flag) Bombay v. Ahmedabad Mfg. & Calico Printing Co. Ltd., (1995) 2 LLJ 765 SC, relied on.

H *Krantikari Suraksha Rakshak Sangathana v. S.V. Naik, (1993) 1 CLR 1002 (Bom), approved.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3375 of 1998. A

From the Judgment and Order dated 20.8.96 of the Industrial Court at Pune in Complaint (ULP) No. 117 of 1993.

P. Cama, and Raju Ramachandrn, Sunil Gupta, Makarand D. Adkar, B
S.D. Singh, Padmakar Kulkarni, Rajesh Kumar, Rajiv Joshi, Ms. Aparajitha
Singh, Ms. Meenakshi Arora, Prashant Kumar and Gaurav Agrawal for the
appearing parties.

The Judgment of the Court was delivered by

S.N. VARIAVA, J. This Appeal is against an Order passed by the C
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 D
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 E
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 F
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 & G
& 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 the case
of *Central Labour Union (Red Flag) Bombay v. Ahmedabad Mfg. & Calico*
Printing Co. Ltd. and Ors., reported in (1995) 2 LLJ 765, held that where the H

A 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.

B 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.

C 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 D 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.

E 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 F 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.

V.S.S.

Appeal dismissed.