A TULIP STAR HOTELS AND ORS.

v.

UNION OF CENTAUR-TULIP EMPLOYEES AND ORS.

MAY 10, 2007

B [DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971:

C *Complaint—Maintainability of challenged—Dispute in relation to non-acceptance of cheques of Voluntary Retirement Scheme—Company alleging absence of employer and employee relationship—Industrial Court and High Court without considering the issue of maintainability and the effect of the decisions of Supreme Court, held the complaint maintainable—Held: Since* D *relevant aspects have not been considered by Industrial Court and High Court, the impugned orders are set aside and the matter remitted to Single Judge of High Court for reconsideration of issues and applicability of decisions of Supreme Court.*

An agreement was entered into between the appellant-Company and the E **Hotel Corporation of India for purchase of Centaur Hotel. There was also an agreement to the effect that a Voluntary Retirement Scheme would be introduced within one year from the date of transfer. Later, consequent upon a writ petition, the appellant Company was directed to consider and independently float the VRS. The said Scheme was floated. The Schedule for** F **payment was also fixed but there was delay in implementation of the VRS. Though majority of workers accepted the cheques without demur, a request was made by some of the employees, who had framed a new trade union, for splitting in each case the cheque amount, i.e. the V.R.S. amount. When separate cheques were issued, the respondents refused to accept the cheques so far as they related to the V.R.S. The loan amount was adjusted and no objection was** G **raised. Subsequently, a complaint was filed under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971. The appellant-Company filed an objection contending that in view of decisions of the Supreme Court the complaint was not maintainable. The Industrial Court rejected the objection and held that the complaint was**

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maintainable. The Single Judge as well as the Division Bench of the High Court declined to interfere. A

In the appeal filed by the Company it was contended that the Industrial Court and the High Court erred in not considering the specific plea of non-maintainability of the complaint and the effect of the decisions of the Supreme Court which had a direct had a bearing on the issue. B

Disposing of the appeal and remitting the matter to the Single Judge of the High Court, the Court

HELD: 1.1. On the question of existence of relationship between the employer and the employee in the background of the trade Union Act decisions have been rendered by Supreme Court in *Vividh Kamgar Sabha* and *Sarva Shramik Sangh.** Though the plea appears to have been specifically urged before the Industrial Court and the High Court, no finding has been recorded on the basic issue. [Para 8 and 9] [383-G, H; 384-A] C

1.2. Since the relevant aspects have not been considered by the Industrial Court and the High Court, the orderes of the Industrial Court, the Single Judge and the Division Bench of the High Court are set aside. The Single Judge would reconsider the issues, as noted in the judgment. Consideration shall be of applicability of the three judgments in *Vividh Kamgar,* Cipla and *Sarva Sharmik* cases*. The effect of part acceptance shall be considered as also the question as to when there has been adjustment of the sums payable in respect of the VRS. As the matter is pending since long it would be appropriate for the Single Judge to dispose of the matter as early as practicable. [Para 14] [387-A, B, C] D E

**Vividh Kamgar Sabha* v. *Kalyani Steels Ltd. and Ors.*, [2001] 2 SCC 381; *Cipla Ltd.* v. *Maharashtra General, Kamgar Union and Ors.*, [2001] 3 SCC 101 and *Sarva Sharmik Sangh* v. *Indian Smelting & Refining Co. Ltd. and Ors.*, [2003] 10 SCC, relied on. F

Vice-Chairman and Managing Director, A.P. SIDC Ltd. and Anr. v. *R. Varaprasad and Ors.*, [2003] 11 SCC 572; *General Labour Union (Red Flag), Bombay* v. *Ahmedabad Mfg. & Calico Printing Co. Ltd. and Ors.*, [1995] Supp 1 SCC 175 and *Bank of India and Ors.*, v. *K.V. Vivek Ayer and Anr.*, [2006] 9 SCC 177, referred to. G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2431 of 2007. H

A From the Final Judgment and Order dated 10.01.2006 of the High Court of Judicature at Bombay in Letters Patent Appeal No. 01 of 2006 in Writ Petition No. 3112 of 2005.

J.P. Cama, Rituraj Biswas, Rahiv Moolchandani and Gopal Singh for the Appellants.

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Colin Golsalves and Shyam Divan, Anubha Rastogi, Jyoti Mendiratta, Parimal K. Shroff, Inklee Barooah, Shweta Verma, Radhika, Bina Gupta and Himanshu Munshi for the Respondents.

The Judgment of the Court was delivered by

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DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Bombay High Court dismissing the Letters Patent Appeal filed by the appellants.

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3. Factual background as presented by the appellants is as follows:

An agreement was entered into between the appellants and the Hotel Corporation of India relating to purchase of hotel called Centaur Hotel, Juhu Beach, on 31.3.2003. On 11.3.2002, an agreement was entered into wherein it E was stipulated that Voluntary Retirement Scheme (in short 'VRS') shall be introduced within one year from the transfer dated 31.5.2002 i.e by 31.5.2003. A Writ Petition was filed on 30.5.2003 with a prayer to enforce the VRS and alternatively it was prayed that the appellant-company be directed to independently float and pay according to VRS. By order dated 8.7.2003, the F High Court directed the appellant-company to consider and float the VRS. The said scheme was floated on 1.10.2003. On 27.10.2003 there was a meeting of the recognized Union functionaries with the functionaries of the appellant-company. A request was made to extend the time of VRS upto 30.11.2003 to accept the option. This was confirmed by the Union's Advocate letter dated 29.10.2003. On 29.1.2004, applications of 570 workers for VRS were accepted G and payment was to be made by 29.4.2004. The terms were set out in Clause 3.3. On 1.7.2004 notice of motion was taken by officers of the appellant-company and on 2.7.2004 by the workers. The prayer essentially was to do the needful within such time as may be determined by the Court. In the counter affidavit, the resolutions were referred to. One Sada Parab represented H the Union of workers. The modalities for implementation of the VRS were fixed

for both the officers and the workers. The schedule for payments was also fixed. Subsequently, there appears to be change of mind and after acceptance, because of financial difficulties there was delay in implementation of the VRS. Majority of the workers accepted the cheques without demur. Some of the employees formed a new trade union called "Union of Centaur Tulip Employees". A request was made by the employees for splitting in each case the cheque amount i.e. VRS amount and on 5.5.2005 the writ petition was withdrawn. Separate cheques were issued but the respondents refused to accept the cheques so far as they related to the VRS scheme. The loan amounts were adjusted and no objection was raised.

4. Complaint was filed under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (in short the 'Trade Union Act'). Objection was filed by the present appellant taking the stand that in view of various decisions of this Court complaint was not maintainable. The Industrial Court rejected the objection and held that the complaint was maintainable.

5. Writ petition was filed by the appellant and the learned Single Judge dismissed the same. As noted above, the Division Bench also affirmed the views of the Industrial Court and the learned Single Judge.

6. In support of the appeal, learned counsel for the appellants submitted that unfortunately both the Industrial Court and the High Court did not consider the effect of several judgments of this Court which had direct bearing on the present issue. Before a learned Single Judge, a plea was specifically urged but not dealt with. After having concluded that the relationship of employer and employee existed learned Single Judge observed that whether relationship of employer and employee existed was kept open and the parties are at liberty to advance evidence if any on that point. The High Court also did not consider those aspects. It is, therefore, submitted that the impugned orders are liable to be set aside.

7. *Per contra*, learned counsel for the respondents submitted that by now the whole enquiry would have been over and unnecessarily the appellants have prolonged the proceedings.

8. We find that on the question of existence of relationship between the employer and the employee in the background of the Trade Union Act several decisions have been rendered (See *Vividh Kamgar Sabha* v. *Kalyani Steels Ltd. and Anr.*, [2001] 2 SCC 381; *Cipla Ltd.* v. *Maharashtra General, Kamgar*

A *Union and Ors.*, [2001] 3 SCC 101 and *Sarva Shramik Sangh* v. *Indian Smelting & Refining Co. Ltd. and Ors.*, [2003] 10 SCC 455).

9. Though the plea appears to have been specifically urged before the Industrial Court and the High Court, no finding has been recorded on the basic issue. It is also necessary to take note of what has been stated by this B Court in *Vice-Chairman and Managing Director, A.P. SIDC Ltd. and Anr.* v. *R. Varaprasad and Ors.*, [2003] 11 SCC 572. In that case it was held that delayed payment per se did not render the scheme to be frustrated, on the contrary, the entitlement is of monthly wages. The decision in *General Labour Union (Red Flag), Bombay* v. *Ahmedabad Mfg. & Calico Printing Co. Ltd.* C *and Ors.*, [1995] Supp 1 SCC 175 also throws considerable light on the controversy.

10. In *Cipla's* case (supra) this Court observed that the dispute is of summary nature. In that case it was *inter alia* observed as follows:

D "5. ..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 re-iterating the views of the Labour Court.

6. In the writ petition the Division Bench of the High Court took E 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 F 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 G 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 H 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.

11. The object was also spelt out at paragraph 8. It reads as under:

"8. But one thing is clear - if the employees are working under a contract covered by 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

A 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 B 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 C 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 D can be done only in a regular industrial tribunal/court under the I.D.Act".

12. In *Sarva Shramik Sangh's* case (supra) it was observed at para 24 as follows:

E "24....In order to entertain a complaint under the Maharashtra Act it has to be established that the claimant was an employee of the employer against whom complaint is made under the ID Act. When there is no dispute about such relationship, as noted in para 9 of Cipla case the Maharashtra Act would have full application. When that F basic claim is disputed obviously the issue has to be adjudicated by the forum which is competent to adjudicate. The sine qua non for application of the concept of unfair labour practice is the existence of a direct relationship of employer and employee. Until that basic question is decided, the forum recedes to the background in the sense that first that question has to be got separately adjudicated. Even if it is G accepted for the sake of arguments that two forums are available, the court certainly can say which is the more appropriate forum to effectively get it adjudicated and that is what has been precisely said in the three decisions. Once the existence of a contractor is accepted, it leads to an inevitable conclusion that a relationship exists between the contractor and the complainant". H

13. In *Bank of India and Ors.* v. *K.V. Vivek Ayer and Anr.*, [2006] 9 SCC 177, it was held that after acceptance even of a part, there is no scope for withdrawal from a scheme. A

14. Since the relevant aspects have not been considered by the Industrial Court and the High Court, we set aside the impugned orders of the Industrial Court and the learned Single Judge and the Division Bench and direct re-consideration, by learned Single Judge, of the issues, as noted above. Consideration shall be of applicability of the three judgments in *Vividh Kamgar, Cipla* and *Sarva Shramik* cases (supra). The effect of part acceptance shall be considered as also the question as to when there has been adjustment of the sums payable in respect of the VRS. As the matter is pending since long it would be appropriate for the learned Single Judge to dispose of the matter as early as practicable, preferably within three months from the date of receipt of this order. To avoid unnecessary delay let the parties appear before the learned Single Judge on 11.6.2007 for hearing of the matter. Learned Chief Justice is requested to pass necessary orders in this regard. It is stated that certain motions have been taken out. They shall be considered while hearing the matter in the light of the present judgment. B C D

15. The appeal is accordingly disposed of with no order as to costs.

R.P. Appeal disposed of.